

1 JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
2 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
3 **CROSNER LEGAL, PC**
4 9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
5 Tel: (866) 276-7637
Fax: (310) 510-6429

6 Attorneys for Plaintiff AUSTIN EASLEY, as an individual and on
7 behalf of all others similarly situated

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ORANGE**

11 AUSTIN EASLEY, as an individual on
12 behalf of himself and on behalf of all others
13 similarly situated,

14 Plaintiff,

15 vs.

16 PARADISE DYNASTY LLC, a Delaware
17 limited liability company; PARADISE
GROUP HOLDINGS USA INC., a
18 Delaware corporation; PARADISE RAMEN
LLC, a Delaware limited liability company;
19 DPPA GROUP INC, a California
20 corporation; and DOES 1-100, inclusive,

21 Defendants.
22
23
24
25
26
27
28

Case No.: 30-2022-01291762-CU-OE-CXC

Assigned for All Purposes to:
Hon. Layne H. Meltzer
Dept. CX-102

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

**[Filed Concurrently with Notice of Motion
and Motion; Declarations of Nikki Trenner,
Austin Easley and Mary Butler; [Proposed]
Order]**

Date: March 14, 2025

Time: 1:30 p.m.

Dept.: CX-102

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL BACKGROUND AND PROCEDURAL POSTURE	2
III.	THE PROPOSED SETTLEMENT TERMS.....	3
A.	Certification of the Settlement Class.....	3
B.	The Benefit Conferred on the Settlement Class	4
C.	Settlement Administration.....	5
D.	Release of Claims.....	5
E.	PAGA Claims and Notice to the LWDA	6
IV.	ARGUMENT	6
A.	The Proposed Settlement Merits Final Approval	7
1.	The Settlement Is the Product of Arm's-Length, Informed Negotiations	7
2.	The Class Reacted Favorably to the Settlement.....	7
B.	The Proposed Settlement Meets the Kullar Factors and is within the Range of Reasonableness.....	8
V.	SETTLEMENT ADMINISTRATION COSTS	12
VI.	ATTORNEY'S FEES AND COSTS	13
A.	The Attorney's Fees Requested Are Fair and Reasonable and Should Be Approved	13
B.	The Requested Fee Award Is Reasonable and Appropriate	14
C.	Class Counsel's Fees are Justified When Calculated as a Percentage of the CommonFund.....	14
D.	A Lodestar Cross-Check Also Supports Class Counsel's Fee Request	16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E. The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar Cases. 17

1. The Results Achieved..... 18

2. Class Counsel Bore Considerable Risk. 18

3. The Skill Required and the Quality of Work..... 19

4. The Contingent Nature of the Fee and Risk Assumed 19

5. Awards in Other Cases 20

F. Class Counsel’s Costs and Expenses are Reasonable 20

VII. CONCLUSION 21

TABLE OF AUTHORITIES

Page(s)

Cases

<u>7-Eleven Owners for Fair Franchising v. Southland Corp.</u>	
(2000) 85 Cal.App.4th 1135.....	12
<u>Amaral v. Cintas Corp. No. 2</u>	
(2008) 163 Cal.App.4th 1157.....	10
<u>In re: American Bank Note Holographics,</u>	
127 F.Supp.2d 418 (S.D.N.Y. 2001).....	8
<u>Blum v. Stenson</u>	
(1984) 465 U.S. 886	14
<u>Boeing Co. v. Van Gernert</u>	
(1980) 444 U.S. 472	15
<u>Carrington v. Starbucks Corp.</u>	
(2018) 30 Cal.App.5th 504.....	10
<u>Cazares v. Saenz</u>	
(1989) 208 Cal.App.3d 279.....	20
<u>Class Plaintiffs v. City of Seattle</u>	
(9th Cir. 1992) 955 F.2d 1268, <u>cert. denied</u> , 506 U.S. 953	6
<u>Cochran v. Schwan's Home Services, Inc.</u>	
(2014) 228 Cal.App.4th 1137.....	10
<u>Deposit Guaranty Nat'l Bank, Jackson, Miss. v. Roper</u>	
(1980) 445 U.S. 326, <u>rehg. den.</u> 446 U.S. 947	13
<u>Dunk v. Ford Motor Co.</u>	
(1996) 48 Cal.App.4th 1794.....	6, 7
<u>Evans v. Jeff D.</u>	
(1986) 475 U.S. 717	14
<u>Fleming v. Covidien</u>	
(C.D. Cal. 2011) 2011 U.S.	10
<u>Harris v. Marhoefer</u>	
(9th Cir. 1994) 24 F.3d 16.....	21
<u>Hensley v. Eckerhart</u>	
(1983) 461 U.S. 424	14

1	<u>Hernandez v. Restoration Hardware, Inc.</u>	
2	(2018) 4 Cal.5th 260.....	15
3	<u>Jennings v. Open Door Mktg. Inc.</u>	
4	(N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356	11
5	<u>Ketchum v. Moses</u>	
6	(2001) 24 Cal.4th 1122.....	20
7	<u>Laffitte v. Robert Half Int’l., Inc.</u>	
8	(2016) 1 Cal.5th 480.....	14, 15, 16, 18
9	<u>Lane v. Facebook, Inc.</u>	
10	(9th Cir. 2012) 696 F.3d 811	12
11	<u>Lealao v. Beneficial Cal., Inc.</u>	
12	(2000) 82 Cal.App.4th 19.....	13, 14
13	<u>Levy v. Toyota Motor Sales, U.S.A.</u>	
14	(1992) 4 Cal.App.4th 807.....	13
15	<u>Mandujano v. Basic Vegetable Prods., Inc.,</u>	
16	541 F.2d 832 (9th Cir. 1976).....	7
17	<u>McKittrick v. Gardner</u>	
18	(4th Cir. 1967) 378 F.2d 872.....	19
19	<u>In re Omnivision Techs., Inc.,</u>	
20	559 (N.D. Cal. 2008).....	18
21	<u>Paul, Johnson, Alston & Hunt v. Grauly</u>	
22	(9th Cir. 1989 886 F.2d 268, 272).....	17
23	<u>Potter v. Pacific Coast Lumber Co.</u>	
24	(1951) 37 Cal.2d 592.....	6
25	<u>Powers v. Eichen</u>	
26	(9th Cir. 2000) 229 F.3d 1249.....	19
27	<u>Rider v. County of San Diego</u>	
28	(1992) 11 Cal.App.4th 1410.....	21
	<u>Serrano v. Priest</u>	
	(1977) 20 Cal.3d 25.....	15, 21
	<u>Slavkov v. First Water Heater Partners I</u>	
	(N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303	11
	<u>In re Taco Bell Wage and Hour Actions</u>	
	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557	11

1	<u>Van Bronkhorst v. Safeco Corp.</u>	
2	(9th Cir. 1976) 529 F.2d 943,950.....	6
3	<u>Van Kempen v. Matheson Tri-Gas, Inc.</u>	
4	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182.....	11
5	<u>Vincent v. Hughes Air West, Inc.</u>	
6	(9th Cir. 1977) 557 F.2d 759.....	15
7	<u>In re Warner Communications Sec. Litig.</u>	
8	(S.D.N.Y. 1985) 618 F.Supp. 735.....	16, 20
9	<u>Wershba v. Apple Computer</u>	
10	(2001) 91 Cal.App.4th 224.....	6, 7, 12, 15
11	<u>White v. Experian Information Solutions, Inc.</u>	
12	(C.D. Cal. 2011) 803 F.Supp.2d 1086.....	12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Statutes

Cal. Rule of Court 3.769 6, 13

Labor Code sections 10

Labor Code § 203 10

Labor Code § 226 10

Labor Code section 2699(l)(2) 6

Labor Code § 2899(e)(2) 10

Other Authorities

Attorney Fee Awards (2d ed. 1993) § 104 15

Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010),
available at www.fjc.gov/sites/default/files/2012/ClassGd3.pdf 12

Newberg on Class Actions (3d ed.) § 14.03 16, 20

Newberg on Class Actions (4th ed. 2002), § 11.41 6

1 **I. INTRODUCTION**

2 Plaintiff and Class and PAGA Representative Austin Easley seeks final approval of a
3 non-reversionary class and PAGA action settlement resolving wage and hour claims on behalf
4 of approximately 374 individuals employed by Defendants Paradise Dynasty LLC, Paradise
5 Group Holdings USA Inc., and DPPA Group Inc. (collectively “Paradise” or “Defendant”) as non-
6 exempt employees in California during the period of July 12, 2021 through July 2, 2023. The
7 proposed \$290,000 total settlement provides about \$148,375 in cash payments to the Class,
8 with an average award of about \$396, plus additional amounts payable under PAGA. The
9 remaining balance will cover settlement administration costs, civil penalties to the state, and
10 reasonable attorney’s fees and costs. The parties and their counsel finalized the settlement
11 after extensive and difficult arms-length negotiations overseen by an experienced and
12 highly-regarded mediator. The Court conditionally certified the Class and preliminarily
13 approved the settlement on November 27, 2024. Since then, the Court-approved notice form
14 was mailed to the Class Members on December 26, 2024, and they reacted very favorably to
15 the settlement. As of the filing of this motion, no class members have opted out of the
16 settlement, and there are no objections.

17 Further, Class Counsel secured an excellent settlement with Paradise after some
18 two years of investigation, litigation, and settlement negotiation and administration, all
19 without any compensation for services rendered or costs expended. The class notice duly
20 informed the class members that Class Counsel would request attorney’s fees not to
21 exceed 1/3 of the Gross Settlement Amount, or \$96,666.67, along with reimbursement of
22 no more than \$17,000 for actual costs incurred litigating this matter. As of the filing of
23 this motion, *not one Class Member objected* to the proposed fee award. Consistent with
24 the Settlement and notice, Plaintiff now respectfully requests the Court award Class
25 Counsel's fees in the amount of \$96,666.67 and costs in the amount of \$14,458.40, as
26 described in the Declaration of Nikki Trenner (“Trenner Decl.”) filed herewith. The
27 requested attorney’s fees are well within the range of reasonableness, especially
28 considering the complex and risky nature of this litigation, the contingent risk assumed,

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

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

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

7 The details of the procedural and factual background of this matter were outlined in
8 the Plaintiff's Motion for Preliminary Approval of Class Action Settlement (filed on or about
9 March 26, 2024). To re-familiarize the Court with this litigation, Defendant Paradise operates a
10 Chinese restaurant named Paradise Dynasty located in South Coast Plaza in Costa Mesa,
11 California, which first opened in 2021. Paradise Dynasty is the first restaurant location in the
12 United States operated by the parent conglomerate "Paradise Group," which originated in
13 Singapore and operates a number of restaurants throughout Southeast Asia. Plaintiff Easley
14 worked for Defendant Paradise Dynasty LLC as a server and bartender from approximately
15 November 2021 to June 2022. [Declaration of Nikki Trenner ("Trenner Decl."), ¶ 3.]

16 Plaintiff filed his class action complaint against Paradise on November 15, 2022, alleging
17 causes of action for (1) recovery of unpaid minimum wages and liquidated damages (2) recovery
18 of unpaid overtime wages; (3) failure to provide meal periods or compensation in lieu thereof; (4)
19 failure to provide rest periods or compensation in lieu thereof; (5) failure to furnish accurate
20 itemized wage statements; (6) failure to timely pay all wages due upon separation of employment;
21 (7) failure to reimburse business expenses; and (8) unfair competition. After notice to the LWDA,
22 on March 8, 2023 Plaintiff filed a First Amended Complaint alleging a claim under PAGA seeking
23 civil penalties based on the same alleged Labor Code violations. [Trenner Decl., ¶ 4.]

24 Paradise has at all times denied Plaintiff's allegations and maintained its payroll policies
25 and procedures comply with California law, that it paid the class members all wages due, and that
26 it properly compensated the class members for all hours worked at the correct rates of pay. It
27 further argued its meal and rest break policies are fully compliant and that it provided class
28 members with all required breaks. Likewise, Paradise contended there would be no reason for an

1 employee to use their own phone while working and accordingly it owes no reimbursement.
2 Defendant also strongly contends the case cannot be maintained as any kind of class or
3 representative action, arguing determining the reasons for any off the clock work, missed/non-
4 compliant breaks, or personal cell phone use would result individualized issues predominating and
5 that a trial on a representative basis would be unmanageable. [Trenner Decl., ¶ 5.]

6 After Plaintiff filed his initial complaint, the Parties engaged in meet and confer
7 discussions regarding discovery, potential law and motion, and the merits of the case, and
8 ultimately agreed to attempt early mediation. They also agreed on a protocol for sharing
9 information and undertook significant informal discovery to facilitate an exchange of information
10 necessary to engage in a meaningful mediation. The Parties then engaged Steve Cerveris, Esq., a
11 respected mediator with extensive wage and hour class action experience and, in May 2023,
12 participated in a full day mediation with Mr. Cerveris that resulted in the proposed settlement.
13 [Trenner Decl., ¶¶ 6-7.] This Court preliminarily approved the settlement on November 27,
14 2024.

15 Class notices were mailed to class members on December 26, 2024, with a 60-day
16 window (to February 24, 2025) for class members to opt out of or object to the proposed
17 settlement. [Declaration of Mary Butler (“Butler Decl.”), ¶¶ 8, 10.]

18 **III. THE PROPOSED SETTLEMENT TERMS**

19 Under the settlement, Paradise will pay \$290,000 into a common fund, the Gross Settlement
20 Amount (“GSA”). Attorney’s fees of up to \$96,666.67 (33.33% of the GSA), litigation costs of up
21 to \$17,000 (only \$14,458.50 is requested), settlement administration costs of \$10,500, and a
22 payment of \$20,000 for PAGA civil penalties (to be divided 75% to the Labor & Workforce
23 Development Agency and 25% to the Aggrieved Employees), all will be paid from the GSA. The
24 remainder of around \$148,375 will be allocated pro rata among the Class Members based on their
25 total weeks worked during the Class Period. No portion of the GSA will revert to Paradise. [Trenner
26 Decl., ¶ 8.]

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

28 The Court conditionally certified a settlement class defined to include all non-exempt,

1 hourly-paid employees of Defendant Paradise Dynasty LLC employed in California at any time
2 during the Class Period of July 12, 2021, through July 2, 2023. The Settlement Administrator
3 ultimately mailed class notices to 374 individuals identified as members of the Class. [Butler
4 Decl., ¶ 8.] Nothing has changed to require reconsideration of the Court’s certification of
5 the Settlement Class.

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

7 As noted, the settlement obligates Paradise to pay \$290,000 to resolve the claims of the
8 Settlement, inclusive of attorney’s fees and costs. A minimum of approximately \$148,375 from the
9 GSA will be distributed to the Participating Class Members. This is a cash settlement that does not
10 require Participating Class Members to submit a claim form to receive their settlement share.
11 Participating Class Members will receive their settlement checks automatically via First Class U.S.
12 Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty
13 percent will be allocated to expenses, penalties and interest, which allocation is consistent with
14 Paradise’s potential liability as discussed below. Paradise will pay any and all applicable employer-
15 side payroll taxes separately and in addition to the GSA. Subject to the Court’s approval, any
16 amounts not claimed (because a class member does not cash his or her settlement check) will be
17 forwarded to the California State Controller’s Unclaimed Property Division. [Trenner Decl., ¶ 9.]

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

1 The average award to the Participating Class Members will be approximately \$396.72 with
2 a maximum award of \$1,218.54 and low award of \$11.95, while the average PAGA award will be
3 about \$15.63, and PAGA awards will range from about \$0.88 to \$37.79. [Butler Decl., ¶ 14.]

4 **C. Settlement Administration**

5 Simpluris, Inc., as the Court-approved Settlement Administrator, mailed the Notice
6 Packet to the Class members after making all reasonable effort to ascertain the best mailing
7 address, including running each address through the National Change of Address database and
8 "skip-tracing" any Notice Packets returned as undeliverable. [Butler Decl., ¶¶ 3-9.] The Class
9 Notice, previously approved by the Court, duly informed Class Members of the settlement
10 terms, including the estimated relief each Class Member will receive, the amounts to be
11 requested for attorney's fees and the class representative enhancement awards, and the right to
12 opt out of or object to the settlement. [Butler Decl., Exh. A.] Simpluris mailed 374 Notice
13 Packets on December 26, 2024. [Butler Decl., ¶ 8.] Ultimately, 25 Notice Packets were deemed
14 undeliverable, representing a 93.3% success rate. [Butler Decl., ¶ 9.] The 60-day response
15 window for objecting to the settlement will expire on February 24, 2025. [Butler Decl., ¶ 10.]
16 As of the filing of this motion, Simpluris has received zero requests for exclusion (for a 100%
17 participation rate), and zero objections to the settlement. No disputes have been submitted
18 regarding the information used to calculate class member settlement shares. [Butler Decl.,
19 ¶¶ 11-13.] Simpluris will submit a supplemental declaration updating the Court on the Class
20 response prior to the hearing.

21 **D. Release of Claims**

22 All Participating Class Members will release Paradise from all claims alleged in the
23 operative complaint, or that could have been brought based on the factual allegations in the
24 operative complaint, including PAGA claims, during the Class Period. The release is limited to the
25 claims that were actually pleaded or could have been pleaded based on the alleged facts in the
26 operative complaint. [Trenner Decl., ¶ 11.]

27 ///

28 ///

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

2 The Parties allocated \$20,000 to payment of civil penalties under PAGA, and Plaintiff
3 submits that amount is fair, reasonable and adequate, and consistent with PAGA's underlying
4 purposes. As required by Labor Code section 2699(l)(2), Plaintiff gave notice of the settlement and
5 the approval hearing to the LWDA via its online portal. [Trenner Decl., ¶ 12; Exh. 2.]

6 **IV. ARGUMENT**

7 The law favors settlement, particularly in class actions where substantial resources can
8 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
9 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
10 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
11 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
12 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
13 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
14 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple Computer
15 (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud
16 or collusion, and to ensure fairness to absent class members. Dunk, 48 Cal.App.4th at 1800-01;
17 Newberg, at §§ 11.22, *et seq.* Review is accomplished through a two-step process intended to
18 determine whether, under the totality of circumstances, the settlement is fair, reasonable and
19 adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91 Cal.App.4th at 245.

20 On a motion for final approval, the trial court is charged with determining whether, in
21 light of the total circumstances of the action and the response of the class members to the
22 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
23 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
24 determination and may consider a number of relevant factors, including: the strength of
25 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
26 further litigation; the amount offered in settlement; the extent of discovery and stage of the
27 proceedings; the experience and opinion of counsel; and the reaction of class members to the
28 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,

1 courts generally apply a presumption of fairness to a proposed class action settlement when:
2 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
3 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
4 similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802;
5 Wershba, 91 Cal.App.4th at 245.

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

7 The proposed settlement of this action warrants final approval under the standards
8 summarized above. The settlement is fair, reasonable and adequate, and represents a favorable
9 resolution of highly disputed claims. Further, the settlement was overwhelmingly approved by
10 the class members, as there are no objections and no class member has requested exclusion as
11 of the filing of this motion.

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

13 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
14 was reached following arm's-length negotiations presided over by Steve Cerveris, Esq., a highly
15 respected and well-known mediator with extensive experience mediating wage and hour class
16 actions. [Trenner Decl., ¶ 7.] Moreover, Plaintiff and his counsel were well-informed about the
17 facts and the law, and counsel Zachary M. Crosner, Jamie Trenner and Nikki Trenner have years
18 of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are
19 well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter.
20 [Trenner Decl., ¶¶ 27-35.] Paradise likewise was represented by highly-qualified and experienced
21 defense counsel. Both sides advocated vigorously for their clients and nothing was "left on the
22 table."

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

24 The settlement was well-received by the class. As of the filing of this motion, no
25 objections have been filed, and not one Class Member requested exclusion out of 374 settlement
26 class members. [Butler Decl., ¶¶ 11-12.] As many courts recognize, class member reaction to the
27 settlement is one of the most important factors to consider in determining if final approval should
28 be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also

1 In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) (“It is well-
2 settled that the reaction of the class to the settlement is perhaps the most significant factor to be
3 weighed in considering its adequacy”) (internal quotation marks omitted).

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

6 Prior to mediation, the parties engaged in formal and informal discovery to facilitate
7 settlement discussions. Thus, Plaintiff reviewed documents and information regarding Paradise’s
8 payroll practices, a random sampling of pay stubs and time records for sampling of class members,
9 applicable compensation plans, etc., and information from Defendant regarding class size and
10 breakdown, work weeks/pay periods, rates of pay, and other relevant information. Plaintiff then had
11 that information analyzed by a consulting expert to assist in determining potential violation rates
12 and other data used to formulate a damages model. Plaintiff’s counsel are confident they obtained
13 sufficient information to understand the law and facts of this case and make an informed decision
14 regarding the proposed settlement and whether it is fair and reasonable. [Trenner Decl., ¶¶ 6, 13.]

15 Using that data, Plaintiff ran various calculations and estimated Paradise’s likely
16 maximum exposure on the class claims at approximately \$2,460,500, including about \$154,500 on
17 the unpaid wage claims, about \$347,600 on the meal period claims, approximately \$761,400 on
18 the rest break claims, about \$57,300 for expense reimbursement, about \$488,200,000 for wage
19 statement violations, and approximately \$651,500 in waiting time penalties. [Trenner Decl., ¶ 14.]
20 Plaintiff’s counsel substantially discounted the value of these claims, however, in light of the
21 multiple and considerable risks posed by proceeding with the litigation, as Defendant raised
22 numerous defenses and vigorously defended against these claims.

23 On the unpaid wage claims, Plaintiff alleged Paradise required employees to clock out for
24 meal periods but continue working due to understaffing and the press of business in the busy
25 restaurant. He further alleges management would retroactively adjust employee time punches by,
26 inter alia, pushing time into the following day or work week in order to avoid having to pay daily
27 or weekly overtime. On the other hand, Paradise argued it accurately tracks and pays for all hours
28 worked, that its compensation policies are legal and fully comply with California law, and that any

1 adjustments to employee time simply corrected documented errors. Paradise likewise argued that
2 class certification on this issue would be impossible since determining if any employee worked
3 through a meal period would require individualized proof. [Trenner Decl., ¶ 15.]

4 On the meal break claim, Plaintiff contends Paradise’s written policies were not fully
5 compliant, and inter alia failed to fully apprise employees of their right to a meal period before the
6 end of the fifth hour of work, and further restricting employees from leaving the premises while on
7 a lunch break. Also, as noted, Plaintiff alleges he and other employees were often pressured to
8 work through their meal breaks due to understaffing and a heavy workload involved in keeping the
9 restaurant functioning. Plaintiff’s review of the time records produced further suggests numerous
10 “de facto” violations and Plaintiff contends around 43.7% of all shifts have at least one unique
11 meal period violation, and particularly with respect to the failure to provide second meal periods
12 on shifts over 10 hours. [Trenner Decl., ¶ 16.]

13 In response, Paradise argued its break policies are fully compliant with California law, that
14 it provided class members with the opportunity to take all required breaks, and that many class
15 members waived their second meal periods. Defendant further maintained that, in light of its
16 compliant policies, whether a class member missed a meal period, received a late meal period, or
17 missed a rest break would have been aberrational and against company policy. Thus, per Paradise,
18 these issues are not amenable to class or representative treatment since their resolution would
19 require individualized inquiries as to why a break was missed or non-compliant. Paradise further
20 argued that in many instances it paid the required one hour of premium pay for documented
21 violations. [Trenner Decl., ¶ 17.]

22 For rest breaks, Plaintiff again argued that there were numerous “de facto” violations
23 where class members didn’t receive a break, or didn’t receive a compliant break, due to the press
24 of business and understaffing. As with meal breaks, Defendant argued the applicable rest break
25 policies complied with California law, and that it authorized and permitted employees to take all
26 required breaks. Defendant further contended that, in light of the fact that it is not required to
27 maintain a record of rest periods, any evidence of failure to authorize rest periods and/or
28 discouragement from taking rest periods would be purely anecdotal and individual issues would

1 predominate on liability. This arguably would once again make class certification and a trial
2 unmanageable since the number of instances an employee missed a rest break would have to be
3 tested on a case by case basis to determine compliance. [Trenner Decl., ¶ 18.]

4 For Plaintiff's expense reimbursement claim, he argued Defendant failed to reimburse
5 Plaintiff and the other employees for expenses incurred in using their personal mobile phones and
6 data for business purposes. Of note, Plaintiff and the other employees were frequently contacted
7 by text message and/or phone call with questions and requests regarding their availability for
8 shifts. When employees must use their personal cell phones for work, this statute required an
9 employer to reimburse them for such use. Cochran v. Schwan's Home Services, Inc. (2014) 228
10 Cal.App.4th 1137, 1144. In response, Paradise argued there would be no need for an employee use
11 a phone to perform his or her work duties, and thus any such use would have been unnecessary
12 and purely for personal convenience, and therefore not reimbursable. [Trenner Decl., ¶ 19.]

13 Plaintiff also alleged derivative claims under Labor Code § 226 (alleged inaccurate wage
14 statement violations) and §§ 201-203 (waiting time penalties), both based on the failure to
15 properly record and pay for all hours worked, and will rise or fall along with that primary claim, in
16 addition to being subject to "good faith" and other defenses available to Defendant. E.g., Amaral
17 v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully
18 fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the
19 underlying claim for failing to pay living wages). Accordingly, Plaintiff discounted the derivative
20 claims significantly in light of these multiple potential defenses. [Trenner Decl., ¶ 20.]

21 As far as potential PAGA liability, the theoretical penalties totaled over \$2.2 million
22 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections
23 at issue for every single eligible pay period. [Trenner Decl., ¶ 21.] As with the class claims,
24 Plaintiff discounted the potential PAGA penalties for the multi-layered defenses proffered by
25 Defendant on the merits, and further discounted these claims since the Court possesses wide
26 discretion to reduce such penalties even if Plaintiff ultimately prevailed. Lab. Code § 2899(e)(2);
27 Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the
28 potential penalties by over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30

1 Cal.App.5th 504 (after a bench trial, the trial court awarded penalties of just \$5 per pay period, a
2 90% reduction, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions
3 (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).

4 Accordingly, the Parties allocated \$20,000 to PAGA penalties, which amount is reasonable
5 and in line with comparable settlements in other class actions in California. Van Kempen v.
6 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
7 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
8 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
9 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
10 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
11 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
12 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
13 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
14 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
15 not objected to the settlement").

16 Thus, Defendant raised various defenses to each of Plaintiff's claims, any one of which, if
17 successful, could have decimated Plaintiff's case. Accordingly, Plaintiff faced risky issues going
18 forward with this litigation, and given the need to secure class certification, try the case, and deal
19 with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff's
20 counsel discounted the value of the class claims consistent with the risks discussed above, and
21 carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation
22 continued. Plaintiff's counsel concluded – in light of these very real and substantial risks –
23 settlement on the proposed terms and without prolonged and costly litigation was in the best
24 interests of the class. The overall \$290,000 recovery represents a significant percentage of
25 Defendant's potential exposure, and given these risks discussed above a total recovery for the
26 class of \$290,000, with an average award of some \$396 per class member, is a fair result within
27 the range of reasonableness considering all potential outcomes. [Trenner Decl., ¶¶ 22-23.]
28

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

21 **V. SETTLEMENT ADMINISTRATION COSTS**

22 The settlement provides for a payment to Simpluris of no more than \$10,500 for its
23 services as the Settlement Administrator. As set forth in the Declaration of Mary Butler,
24 Simpluris has performed and will continue to perform its required duties through final distribution
25 of the settlement funds, and incurred \$10,500.00 in fees and expenses. [Butler Decl., ¶ 15.]
26 Accordingly, Plaintiff respectfully requests the Court approve payment of \$10,500.00 to Simpluris
27 from the GSA. [Trenner Decl., ¶ 24.]

28 /////

1 **VI. ATTORNEY'S FEES AND COSTS**

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

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

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

22 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to
23 obtain, and the settlement provides substantial cash payments to Class Members, with an
24 average award of about \$296, and with a maximum award of over \$1,200. Importantly as
25 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the
26 filing of this motion, there are no objections to the settlement and zero individuals opted out.
27 [Butler Decl., ¶¶ 11-12, 14.]

28 /////

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

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

11 As part of the Settlement, Paradise agreed not to object to an award of no more than
12 1/3 of the GSA for attorney's fees, or \$96,666.67, and up to \$17,000 in reimbursement for
13 litigation costs and expenses (only \$14,458.40 is requested). Such a fee is commensurate
14 with what the market would provide for similar services and the Court therefore can most
15 certainly enforce the agreement. As California's Court of Appeal has instructed:

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

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

21 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
22 arms-length bargaining regarding relief to the Class was completed. [Trenner Decl., ¶ 25.]
23 The requested fee and cost award was a product of these arms-length negotiations and fairly
24 reflects the marketplace value of the services rendered by Class Counsel in this case. As a
25 result, the fee agreed to by the parties should be approved.

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

28 In approving fee applications, courts typically apply either a percentage-of-recovery
method or the lodestar method. Laffitte v. Robert Half Int'l., Inc. (2016) 1 Cal.5th 480, 489;

1 Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other
2 grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260. The California
3 Supreme Court recently recognized the advantages and equities of calculating attorney's fees
4 using the percentage-of-the-common-fund method in another wage-and-hour case:

5 The recognized advantages of the percentage method-including relative ease of
6 calculation, alignment of incentives between counsel and the class, a better
7 approximation of market conditions in a contingency case, and the encouragement it
8 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
9 litigation convince us the percentage method is a valuable tool that should not be
10 denied our trial courts.

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

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

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

27 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
28 this action of no more than 1/3 of the total amount recovered by the Class via the lawsuit, or
29 \$96,666.67. The percentage requested is justified for the reasons set forth further below, and
30 comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review of

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

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

10 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
11 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
12 an objective measure of the work performed into the calculation of a reasonable attorney fee."
13 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 152.1 hours of time on this matter,
14 resulting in a modest and very reasonable lodestar of \$113,780.00.

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

1 Court; (13) administration of the settlement, including communications with the Settlement
2 Administrator and settlement class members; (14) drafting the motion for final approval and
3 request for attorney's fees, and attending the final approval hearing; and (15) extensive
4 communications with the Plaintiff regarding case status, case investigation and document review,
5 mediation, and settlement terms. Additionally, Class Counsel will incur additional time following
6 final approval to, inter alia, respond to class member inquiries, work with the Settlement
7 Administrator on the distribution of settlement funds, and on the compliance hearing and amended
8 judgment. [Trenner Decl., ¶ 26, Exh. 3.]

9 In pursuing this matter, Class Counsel incurred total attorney's fees of \$113,780.00,
10 based on 152.1 attorney hours. The lodestar is based on an eminently reasonable number of
11 hours worked to litigate this matter to a successful conclusion and the requested attorney hourly
12 rates are reasonable and comport with hourly rates charged by other attorneys with similar
13 experience in this practice area in California. [Trenner Decl., ¶¶ 27-41.] On a lodestar basis, the
14 fee request of \$96,666.67 results in a base lodestar that is higher than the fees requested on
15 percentage of the recovery basis. Class Counsel submits the lodestar crosscheck operates to
16 show that the percentage fee request is reasonable considering the fees requested are lower
17 than the actual value of the services rendered when valued via traditional hourly billing.

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

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

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

1. The Results Achieved.

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

2. Class Counsel Bore Considerable Risk.

At the time of filing the complaint, Class Counsel recognized that they would have to expend a substantial amount of time and advance significant costs to prosecute a statewide class action suit with no guarantee of compensation or reimbursement, in the hope of prevailing against a sophisticated company represented by first-rate attorneys. Despite their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks of class certification and the ability to prove class-wide and individual damages. In light of the highly uncertain nature of this suit, Class Counsel also bore the risk that Paradise would dig in and attempt to bury their small firms in work. Given the small size of Class Counsel's

1 firm, not receiving any compensation for several years while simultaneously advancing
2 litigation costs posed considerable risk and difficulty. [Trenner Decl., ¶¶ 42-43.]

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

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

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

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

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

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

3 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
4 the investment of unnecessary time in a case, and the adverse resolution of any one of several
5 difficult issues present in this matter could have doomed the entire effort. As discussed, the
6 attorney's fees in this case were not only contingent but fairly risky, and there was always a
7 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.
8 [Trenner Decl., ¶¶ 42-43.] Accordingly, the contingent nature of the fee and the financial
9 burdens on Class Counsel and Plaintiff also support the fee requested.

10 **5. Awards in Other Cases**

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

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

27 Plaintiff's counsel also request reimbursement of actual out-of-pocket expenses incurred to
28 prosecute this action. These expenses were incidental and necessary to the effective representation

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

9 As explained in the Trenner Declaration, Class Counsel incurred a total of
10 \$14,458.40 in expenses incurred in connection with this litigation. These expenses
11 include the amounts paid for court filing fees, service of process, expert fees, and
12 mediation fees, all of which are costs normally billed to and paid by the client. These
13 costs were reasonably incurred in the prosecution of this matter and it is respectfully
14 requested that the Court authorized they be reimbursed in full. [Trenner Decl., ¶¶ 44-45.]

15 VII. CONCLUSION

16 For all the foregoing reasons, Plaintiff Austin Easley respectfully requests that the Court
17 grant this motion and grant final approval of the proposed class action settlement and approve the
18 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of
19 the Settlement Administrator's fees and expenses, approve the requested class representative
20 enhancement payment, approve the award of attorney's fees and costs as requested, and enter
21 judgment in this action. Finally, Plaintiff requests the Court set a final compliance hearing for
22 March 13, 2026, or a later date convenient for the Court.

23
24 Dated: February 24, 2025

CROSNER LEGAL, PC

25 By: 

Zachary M. Crosner, Esq.

Jamie K. Serb, Esq.

Nikki Trenner, Esq.

Attorneys for Plaintiff AUSTIN EASLEY