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7 **SUPERIOR COURT OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF SANTA CLARA**
9

10 JUAN MANUEL NINO RICO, individually,
11 and on behalf of all others similarly situated
and aggrieved,

12 Plaintiff,

13 vs. F M A LANDSCAPE SERVICES, INC.,
14 a California corporation, MIGUEL A.
MEDINA, an individual, and DOES 1
15 through 20, inclusive,

16 Defendants.
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CASE NO. 23CV409762

Assigned for All Purposes to:
Hon. Theodore C. Zayner
Dept. 19

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

[Filed concurrently with Notice of Motion and
Motion; Declarations of J. Kirk Donnelly and
Jarrod Salinas; [Proposed] Order]

Date: January 15, 2025
Time: 1:30 p.m.
Dept.: 19

1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Juan Manuel Nino Rico seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 192 individuals
4 who worked for defendants FMA Landscape Services, Inc. and Miguel A. Medina (together
5 “FMA” or “Defendant”) as a non-exempt employee during the period of July 16, 2018 through
6 December 31, 2023. The proposed \$360,000 total settlement provides about \$198,976 in cash
7 payments to the Class, with an average award of at least \$1,036, plus additional amounts payable
8 under PAGA. The remaining balance will cover a modest service award to Plaintiff, settlement
9 administration costs, civil penalties to the state, and reasonable attorney’s fees and costs. The
10 parties and their counsel finalized the settlement after extensive and difficult arms-length
11 negotiations overseen by an experienced and highly-regarded mediator. The Court conditionally
12 certified the Class and preliminarily approved the settlement on October 4, 2024. Since then, the
13 Court-approved notice form was mailed to the Class Members on November 7, 2024, and they
14 have reacted very favorably to the settlement. As of the filing of this motion, no Class Members
15 have requested exclusion, and there are no objections.

16 Class Counsel secured an excellent settlement with FMA after extensive
17 investigation, litigation, and settlement negotiation and administration, all without any
18 compensation for services rendered or costs expended. The class notice duly informed
19 the class members that Class Counsel would request attorney’s fees not to exceed one-
20 third of the Gross Settlement Amount, or \$120,000.00, along with reimbursement of no
21 more than \$10,000 for actual costs incurred litigating this matter. As of the filing of this
22 motion, *not one Class Member objected* to the proposed fee award. Consistent with the
23 Settlement and notice, Plaintiff now respectfully requests the Court award Class
24 Counsel’s fees in the amount of \$120,000 and costs in the amount of \$6,523.30, as
25 described in the Declaration of J. Kirk Donnelly (“Donnelly Decl.”) filed herewith. The
26 requested attorney’s fees are well within the range of reasonableness, especially
27 considering the complex and risky nature of this litigation, the contingent risk assumed,
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1 the nearly two-plus year delay in payment and, when subjected to a lodestar crosscheck,
2 result in a base reasonable lodestar enhancement of about 1.41.

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

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

7 On March 20, 2023, Plaintiff, on behalf of himself and all others similarly situated, filed a
8 class action complaint against Defendant for several alleged violations of the Labor Code and
9 IWC Wage Orders. Plaintiff filed his claims on behalf of a putative class of individuals who
10 worked for FMA as non-exempt employees in California. Defendant FMA provides commercial
11 landscaping services in the San Jose area. Plaintiff Juan Rico worked for FMA as landscaper and
12 crew lead. He was hired in December 2021 and terminated on or about October 2, 2022.

13 [Donnelly Decl., ¶ 2.]

14 Plaintiff alleged that FMA failed to pay the class all wages due by paying employees
15 based on their scheduled hours rather than their actual time punches, essentially resulting in
16 substantial time on the clock that went uncompensated. Plaintiff also alleged FMA failed to
17 provide all required meal and rest breaks on a fully compliant basis, primarily by combining
18 employee meal and rest breaks into a single one-hour break. Plaintiff alleges class members never
19 received an extra hour of premium pay in lieu of a missed or non-compliant meal or rest break.
20 Based on these allegations, Plaintiff's class action complaint asserted claims for damages for: (1)
21 failure to pay all wages due, (2) failure to provide all required meal and rest breaks or
22 compensation in lieu thereof; (3) failure to provide accurate, itemized wage statements; (4) failure
23 to pay all wages due upon termination of employment; (5) unfair competition, and (6) violation of
24 PAGA. [Donnelly Decl., ¶ 3.]

25 FMA has at all times denied Plaintiff's allegations and maintained its meal and rest break
26 and payroll policies and procedures comply with California law, and that it provided the class
27 members with required meal and rest breaks. FMA also argued it accurately tracked and paid for
28 all hours worked by its employees, including overtime hours. Additionally, FMA strongly

1 contends the case cannot be maintained as any kind of class or representative action, arguing that
2 to the extent class members missed meal and/or rest breaks, that such breaks were non-compliant,
3 it would have been intermittent and infrequent and evidence of such missed breaks or off the
4 clock work would be purely anecdotal, and therefore individualized issues would predominate
5 and trial would be unmanageable. [Donnelly Decl., ¶ 4.]

6 After Plaintiff filed his complaint, the Parties met and conferred on discovery, potential
7 law and motion, and other case management issues, and ultimately agreed to attempt early
8 mediation. The Parties then engaged in extensive informal discovery to facilitate an exchange of
9 information necessary to engage in a meaningful mediation. The Parties then engaged the Hon.
10 George Hernandez (Ret.), a highly respected mediator with extensive wage and hour class action
11 experience and, on October 30, 2023, participated in a full day mediation with Judge Hernandez.
12 By the end of the day, the Parties were able to reach agreement on all major issues. [Donnelly
13 Decl., ¶¶ 5-6.] The Court granted preliminary approval to the settlement on October 4, 2024.

14 Class Notices were mailed to class members on November 7, 2024, with a 60-day
15 window (to January 6, 2025) for class members to opt out or object to the proposed
16 settlement. [Declaration of Jarrod Salinas ("Salinas Decl."), ¶ 5, 8-10.]

17 **III. THE PROPOSED SETTLEMENT TERMS**

18 Under the settlement, FMA will pay \$360,000.00 into a common fund, the Gross
19 Settlement Amount, in three installments over approximately 300 days following final approval.
20 Reasonable attorney's fees of up to 1/3 of the GSA, or \$120,000.00, litigation costs of up to
21 \$10,000 (only \$6,523.30 is requested), an enhancement award of up to \$10,000 to Plaintiff,
22 settlement administration costs of \$12,000, and \$20,000 for PAGA civil penalties,¹ all will be
23 paid from the Gross Settlement Amount. The remainder of approximately \$198,976 will be
24 allocated pro rata among the Participating Class Members based on the weeks worked during the
25 Class Period. No portion of the Class Settlement Amount will revert to FMA. [Donnelly Decl., ¶
26 7.]

27 ¹ Per PAGA, the \$15,000 of this amount will go to the Labor & Workforce Development Agency as the
28 State's share of the civil penalties, and the remaining \$5,000 will be distributed pro rata to the Aggrieved
Employees

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

3 The Court conditionally certified a settlement class defined to include all individuals who
4 worked for Defendant as a non-exempt employee during the period of July 16, 2018 through
5 December 31, 2023. The Settlement Administrator ultimately mailed class notices to 192
6 individuals identified as members of the Class. [Salinas Decl., ¶ 5.] Nothing has changed
7 to require reconsideration of the Court's certification of the Settlement Class.

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

9 As noted, about \$198,976 from the Gross Settlement Amount will be distributed to the
10 Participating Class Members. This is a cash settlement that does not require Participating Class
11 Members to submit a claim form to receive their settlement share. Participating Class Members
12 will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of
13 each settlement share will be allocated to wages and the remaining eighty percent will be
14 allocated to expenses, penalties and interest, which allocation is consistent with FMA's potential
15 liability as discussed below. FMA will pay all applicable employer-side payroll taxes separately
16 from the GSA. Subject to the Court's approval, any amounts not claimed (because a class
17 member does not cash his or her settlement check) will be forwarded to the California State
18 Controller's Unclaimed Property Fund. [Donnelly Decl., ¶ 8.]

19 Each Participating Class Member will receive a pro rata share of the Net Settlement
20 Amount based on their total weeks worked for FMA as a non-exempt employee during the Class
21 Period. Thus, each Individual Settlement Payment will be calculated using formulaic criteria
22 equally applied to all Class Members in order to proportionately compensate them for the actual
23 value of their claims relative to fellow class members. Similarly, each Class Member's
24 Individual Settlement Payment will be calculated using criteria that would typically be used in
25 determining appropriate amounts of unpaid wages and damages in wage and hour litigation under
26 applicable law. These methods are intended to ensure each Class Member receives a portion of
27 the available settlement funds corresponding to the relative value of his or her potential claims.
28 The proposed allocation provides the most reasonable way to compensate Class Members based

1 on the amount of time they worked for FMA and the number of instances they were not
2 compensated properly or may have been denied required breaks. [Donnelly Decl., ¶ 9.]

3 The average class award will be approximately \$1,036, and class awards will range from
4 about \$15 to over \$4,300. The average PAGA award will be about \$41. [Salinas Decl., ¶¶ 13-14.]

5 **C. Settlement Administration**

6 Phoenix Settlement Administrators, as the Court-approved Settlement Administrator,
7 mailed the Notice Packet to the Class members after making all reasonable effort to ascertain
8 the best mailing address, including running each address through the National Change of
9 Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Salinas
10 Decl., ¶¶ 2-7.] The Class Notice, previously approved by the Court, duly informed Class
11 Members of the settlement terms, including the estimated relief each Class Member will
12 receive, the amounts to be requested for attorney's fees and the class representative
13 enhancement awards, and the right to opt out of or object to the settlement. [Salinas Decl.,
14 ¶ 5, Exh. A.] Phoenix mailed 192 Notice Packets on November 7, 2024. [Salinas Decl., ¶ 5.]
15 Ultimately, zero Notice Packets were deemed undeliverable, representing a 100% success
16 rate. [Salinas Decl., ¶ 7.] The 60-day response window for objecting to the settlement will
17 expire on January 6, 2025. [Salinas Decl., ¶¶ 8-10.] As of the filing of this motion, Phoenix
18 has received zero requests for exclusion (for a 100% participation rate), and zero objections
19 to the settlement. No disputes have been submitted regarding the information used to
20 calculate class member settlement shares. [Salinas Decl., ¶¶ 8-10.] Phoenix will submit a
21 supplemental declaration updating the Court on the status of administration prior to the
22 hearing

23 **D. Release of Claims**

24 All Participating Class Members will be deemed to release defendant FMA from all
25 claims alleged in the operative complaint, or that could have been brought based on the facts
26 asserted in the operative complaint, including PAGA claims, from July 16, 2018 through
27 December 31, 2023. The release is limited to the claims that were actually pleaded or could have
28 been pleaded based on the alleged facts in the complaint. Only Plaintiff Rico is providing a full

1 general release of claims and waiver of Civil Code section 1542. [Donnelly Decl., ¶ 10.]

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

3 As noted, the Parties allocated \$20,000 to payment of alleged civil penalties under PAGA,
4 and respectfully request the Court approve that amount as fair, reasonable and adequate, and
5 consistent with PAGA's underlying purposes. As required by Labor Code section 2699(l)(2),
6 Plaintiff gave notice of the settlement and the approval hearing to the LWDA via its online portal.
7 [Donnelly Decl., ¶ 11; Exh. 1.]

8 **IV. ARGUMENT**

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

23 On a motion for final approval, the trial court is charged with determining whether, in
24 light of the total circumstances of the action and the response of the class members to the
25 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
26 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
27 determination and may consider a number of relevant factors, including: the strength of
28 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of

1 further litigation; the amount offered in settlement; the extent of discovery and stage of the
2 proceedings; the experience and opinion of counsel; and the reaction of class members to the
3 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,
4 courts generally apply a presumption of fairness to a proposed class action settlement when:
5 (1) the settlement is reached through arm's-length bargaining; (2) investigation and
6 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
7 experienced in similar litigation; and (4) the percentage of objectors is small. Dunk, 48
8 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

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

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

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

17 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
18 was reached following arm's-length negotiations presided over by the Hon. George
19 Hernandez (Ret.), a highly respected and well-known mediator with extensive experience
20 mediating wage and hour class actions. [Donnelly Decl., ¶ 6.] Moreover, Plaintiff and his
21 counsel were well-informed about the facts and the law, and counsel J. Kirk Donnelly has
22 years of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel
23 are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the
24 matter. [Donnelly Decl., ¶¶ 25-27.] Defendant FMA likewise was represented by highly-
25 qualified and experienced defense counsel. Both sides advocated vigorously for their clients,
26 and nothing was "left on the table."

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

1 The settlement was well-received by the class. As of the filing of this motion, no
2 objections have been filed, and no Class Member has requested exclusion out of 192 settlement
3 class members. [Salinas Decl., ¶¶ 8-9.] As many courts recognize, class member reaction to the
4 settlement is one of the most important factors to consider in determining if final approval should
5 be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see
6 also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) (“It is
7 well-settled that the reaction of the class to the settlement is perhaps the most significant factor to
8 be weighed in considering its adequacy”) (internal quotation marks omitted).

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

11 The proposed settlement involves a substantial sum of money that, when distributed,
12 will confer meaningful monetary benefits on the Class members. As described above, each
13 individual award will be based on an allocation consistent with the nature of the claims
14 asserted and will fairly and equitably allocate the available funds in relation to the degree of
15 damage each Class member incurred. While Class members who worked for only a short
16 period of time will receive relatively small sums, those with longer tenures and who worked
17 more hours and shifts, and earned more compensation throughout the class period, will
18 receive appropriately larger awards.

19 Prior to mediation, the parties engaged in informal discovery to facilitate settlement
20 discussions. As a result, Plaintiff has reviewed documents and information regarding FMA’s
21 payroll practices, a sampling of pay stubs and time records, meal and rest break policies,
22 employee handbooks, etc., and information from Defendant regarding class size and breakdown,
23 work weeks, rates of pay, and other information used to formulate a damages model. Plaintiff’s
24 counsel is confident they obtained sufficient information to enable them to understand the law
25 and facts of this case and make an informed decision regarding the proposed settlement and
26 whether it is in the best interests of the class. [Donnelly Decl., ¶¶ 5, 12.]

27 Using that data, Plaintiff ran various calculations under different theories of liability and
28 estimated FMA’s maximum exposure on the class claims at approximately \$2,344,175, including

1 about \$185,775 on the unpaid wage claim, \$1,238,500 on the meal and rest break claims,
2 \$278,100 on the wage statement claim, and \$234,000 on the waiting time penalty claim.
3 [Donnelly Decl., ¶ 13.] Plaintiff substantially discounted the value of these claims, however, in
4 light of the multiple and considerable risks posed by proceeding with the litigation.

5 First, on the unpaid wage claims, Plaintiff alleged that his review of the time and pay
6 records produced indicated FMA essentially paid the class members a weekly “salary” based on
7 40 hours per week. Per Plaintiff, the pay records show employees were paid for 40 hours per
8 week almost without fail even though the corresponding time punches, which tracked time to the
9 exact minute, show they frequently worked more than 8 hours per shift and more than 40 hours
10 per week. Plaintiff’s review of the sampling of time records suggests approximately 65% of
11 shifts are for more than 8 hours, and accordingly Plaintiff contends FMA shorted the class
12 members on hours worked and compensation almost 2/3 of the time. Under the California
13 Supreme Court’s decision in Troester v. Starbucks Corporation (2018) 5 Cal.5th 829, FMA
14 violated minimum wage and overtime laws each shift it failed to compensate employees for all
15 hours worked, even when the lost time is nominal. “[A]n employer that requires its employees to
16 work minutes off the clock on a regular basis or as a regular feature of the job may not evade the
17 obligation to compensate the employee for that time by invoking the de minimis doctrine. A few
18 extra minutes of work each day can add up.” In response, FMA contended it accurately tracked
19 and paid for all employee hours worked, and noted its payroll records demonstrated that it
20 frequently paid overtime when employees worked over 8 hours per shift or over 40 hours per
21 week. [Donnelly Decl., ¶ 14.]

22 Plaintiff also contended Defendant’s written meal and rest break policy was at best
23 partially compliant, and did not explain meal and rest breaks must be for a net 30 minutes/10
24 minutes without interruption, nor does it contain the required “major fraction thereof” language
25 required for rest periods. Also, while it provides employees shall do no work while on a meal
26 period, it does not specify that employees are completely free from all employer control during a
27 meal break (or a rest break for that matter. As a practical matter, however, Plaintiff contended
28 multiple de facto violations. First, the review of FMA’s time records suggests it did not track the

1 clock out/in times for meal periods but instead had an “auto deduct” policy where 30 minutes was
2 deducted each shift for a meal period regardless of whether the meal period occurred or not.
3 Under California law, “[i]f time records show missed, short, or delayed meal periods with no
4 indication of proper compensation, then a rebuttable presumption [of meal period violations]
5 arises” against the employer, including at the summary judgment stage. Donohue v. AMN Servs.
6 LLC (2021) 11 Cal.5th 58, 77. Nevertheless, while it appears Plaintiff and the class members
7 generally received their meal periods, Plaintiff also contends FMA’s combined the meal period
8 with the required paid rest breaks and he and the class members received a single, one-hour break
9 at the approximate mid-point of each shift, which practice violates California law. He also
10 contends the company placed limits on how employees used their meal periods, and specifically
11 that employees were not permitted to lie down and rest or take a nap. [Donnelly Decl., ¶ 15.]

12 Defendant denies Plaintiff’s contentions, claiming it made meal and rest breaks available
13 to Class Members in compliance with California law. Defendant contends its meal and rest break
14 policies are lawful and that Class Members were frequently reminded they were required to take
15 all meal and rest breaks, and that they in fact took all required breaks. Finally, Defendant argues
16 that Plaintiff’s meal and rest break claims are not susceptible to common proof, as the claims
17 would require individualized inquiry, including whether there was an unlawful companywide
18 policy, whether employees had the opportunity to take meal and rest periods, whether they
19 voluntarily chose to forego their meal and rest periods, and whether Defendant ever prevented
20 them from taking meal and rest periods. Accordingly, Defendant contends these claims are
21 vulnerable to a ruling that class treatment is not appropriate. [Donnelly Decl., ¶ 16.]

22 Plaintiff also alleged derivatively that, as a result of the above alleged violations,
23 Defendant failed to provide accurate wage statements and failed to timely pay all wages that were
24 due and owing upon separation of employment. Thus, should the primary claims fail, Plaintiff’s
25 derivative claims would also fail. Defendant also contends it would not be liable for waiting time
26 penalties because a “good faith dispute” exists over the payment of past wages. Amaral v. Cintas
27 Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1201. Further, Defendant contends Plaintiff would
28 have to prove that Defendant “willfully” failed to pay Class Members appropriate wages due

1 upon separation of employment. Defendant contends that any failure to pay wages upon
2 separation was not willful. [Donnelly Decl., ¶ 17.]

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

24 The settlement obviates the significant risk that this Court may find any kind of class
25 resolution unachievable or might deny certification of all or some of Plaintiff's claims.
26 Furthermore, even if Plaintiffs obtained certification of all or some of the claims, continued
27 litigation would be expensive as the parties pursued merits discovery, a probable motion to
28 decertify, as well as trial and possible appeals, and would substantially delay any recovery by the

1 class with no assurance of recovering significantly more than the proposed settlement. Further, in
2 support of its position that installment payments are appropriate, Defendant provided Plaintiff
3 with financial documentation such as tax returns, balance sheets, and P&L statements, which
4 Plaintiff then had reviewed by an accounting expert. Based on that review, the Parties agreed
5 installments are appropriate to ensure the settlement does not impact the business's cash flow
6 such that it would jeopardize ongoing operations and its ability to meet payroll obligations to
7 current employees. Overall, while Plaintiff is confident in the merits of his claims, a legitimate
8 controversy exists as to each cause of action. Plaintiff also recognizes proving the amount of
9 wages and penalties due each Class Member would be an expensive and uncertain proposition.
10 [Donnelly Decl., ¶ 19.]

11 Plaintiff and counsel discounted the value of the class claims consistent with the risks
12 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
13 benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and
14 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
15 was in the best interests of the class. The overall \$360,000 recovery represents a significant
16 percentage of Defendant's potential exposure and, given the risks addressed above, a total
17 recovery for the class of \$360,000, which will result in average award of some \$1,036 per class
18 member, is a significant result well within the range of reasonableness considering all potential
19 outcomes, and it will provide direct monetary awards to all Class Members without further delay.
20 [Donnelly Decl., ¶ 20.]

21 Importantly, the mere fact that a settlement does not provide the same recovery as might
22 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
23 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
24 settlement process...even if the relief afforded by the proposed settlement is substantially
25 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
26 settlement because the public interest may indeed be served by a voluntary settlement in which
27 each side gives ground in the interest of avoiding litigation”); Lane v. Facebook, Inc., 696 F.3d
28 811, 819 (9th Cir. 2012) (“[T]he question whether a settlement is fundamentally fair . . . is

different from the question whether the settlement is perfect in the estimation of the reviewing court"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement is non-reversionary and will provide immediate benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf) (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

V. PLAINTIFF'S ENHANCEMENT AWARD

Under the terms of the settlement, Plaintiff seeks a modest incentive award of \$10,000 for his service in bringing these claims on behalf of the Class. The request is reasonable given the risks he undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing himself at risk of discrimination by future prospective employers. As set forth in more detail in his declaration submitted with the preliminary approval motion, among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. [Declaration of Juan Manuel Nino Rico, ¶¶ 2-9; Donnelly Decl., ¶ 21.] Accordingly, the requested enhancement payments to Plaintiff is appropriate and justified as part of the settlement.

1 **VI. SETTLEMENT ADMINISTRATION COSTS**

2 The settlement provides for a payment to Phoenix for its services as the Settlement
3 Administrator. As set forth in the Declaration of Jarrod Salinas, Phoenix has performed and will
4 continue to perform its required duties through final distribution of the settlement funds and
5 incurred \$12,000 in fees and expenses. [Salinas Decl., ¶ 16; Exh. B.] Accordingly, Plaintiff
6 respectfully requests the Court approve payment of \$12,000 to Phoenix from the GSA. [Donnelly
7 Decl., ¶ 22.]

8 **VII. ATTORNEY'S FEES AND COSTS**

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

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

22 As addressed in detail above, at the time the parties reached the tentative settlement
23 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
24 some or all the claims would not be certified for class treatment, as Defendant had strong
25 arguments that its compensation policies were legal and properly compensated the class
26 members, that the class might not be sufficiently numerous, and that many putative class
27 members previously waived the claims at issue. Even if Plaintiff certified some or all of the
28 claims and ultimately prevailed on the merits, it undoubtedly would have taken several years

1 to realize any recovery while they pursued class certification, trial, and an almost certain
2 appeal. [Donnelly Decl., ¶¶ 14-18.]

3 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to
4 obtain, and the settlement provides substantial cash payments to Class Members, with an
5 average award of about \$1,036, and with a maximum award of over \$4,300. Importantly as
6 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the
7 filing of this motion, there are no objections to the settlement and no opt outs. [Salinas Decl.,
8 ¶¶ 8-9.]

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

10 The United States Supreme Court has ruled the parties to a class action properly may
11 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
12 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
13 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
14 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
15 should not result in a second major litigation. Ideally, of course, litigants will settle the
16 amount of a fee." The United States Supreme Court has reemphasized this policy and further
17 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
18 (1984) 465 U.S. 886, 902 n.19.

19 As part of the Settlement, FMA agreed not to object to an award of no more than 1/3
20 of the GSA for attorney's fees, or \$120,000, and up to \$10,000 in reimbursement for
21 litigation costs and expenses (only \$6,523.30 is requested). Such a fee is commensurate
22 with what the market would provide for similar services and the Court therefore can most
23 certainly enforce the agreement. As California's Court of Appeal has instructed:

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

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

28 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive

1 arms-length bargaining regarding relief to the Class was completed. [Donnelly Decl.,
2 ¶ 23.] The requested fee and cost award was a product of these arms-length negotiations and
3 fairly reflects the marketplace value of the services rendered by Class Counsel in this case.
4 As a result, the fee agreed to by the parties should be approved.

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

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

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

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

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

26 In determining a reasonable common fund fee award, courts should also consider the
27 fact that fees serve as an economic incentive for lawyers to bring class action litigation to
28 achieve increased access to the judicial system for meritorious claims and to enhance

1 deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without
2 prosecution on a contingent basis and use of the class action mechanism, the courthouse door
3 would effectively be closed to most class members due to the relatively small size of their
4 individual claims in relation to the enormous time and cost associated with class action
5 litigation.

6 Here, Class Counsel seek a fee award for their successful prosecution and resolution
7 of this action of no more than one-third of the total amount recovered by the Class via the
8 lawsuit, or \$120,000. The percentage requested is justified for the reasons set forth further
9 below, and comports with fee awards calculated on a percentage-of-the-benefit basis.
10 Indeed, review of class action settlements shows that courts have historically awarded fees in
11 the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner
12 Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that
13 percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on
14 Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a
15 reasonable fee award from a common fund in order to assure that the fees do not consume a
16 disproportionate part of the recovery obtained for the class, although somewhat larger
17 percentages are not unprecedented.").

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

19 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
20 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for
21 bringing an objective measure of the work performed into the calculation of a reasonable
22 attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 108.4 hours of time on
23 this matter, resulting in a modest and very reasonable lodestar of \$85,055.00.

24 As is fully detailed in the Donnelly Declaration, Class Counsel's efforts included:
25 (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including
26 legal research, obtaining Plaintiff's employment records, research into similar claims and claims
27 against other employers in the same industry, and attempts to locate and contact other FMA
28 employees; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related

1 documents; (4) case management, including communications with defense counsel, meeting and
2 conferring/preparing case management statements, etc.; (5) lengthy discussions with defense
3 counsel regarding settlement/mediation and informal discovery needed for meaningful settlement
4 discussions; (6) engaging in substantial informal discovery, including propounding informal
5 discovery “requests” and reviewing documents and other information produced; (7) drafting a
6 mediation brief and accompanying damages model after review and analysis of defendant’s
7 informal discovery production; (8) attending an all-day mediation; (9) negotiating and drafting
8 the settlement agreement and related documents; (10) drafting the motion for preliminary
9 approval and attending the hearing thereon; (11) administration of the settlement, including
10 addressing application of the escalator clause, communications with the Settlement Administrator
11 and settlement class members; (12) drafting the motion for final approval and motion for
12 attorney’s fees, and attending the final approval hearing; and (13) extensive communications with
13 the Plaintiff regarding case status, case investigation and document review, mediation, and
14 settlement terms. Additionally, Class Counsel will incur additional time to attend the final
15 approval hearing and following final approval to, inter alia, respond to class member inquiries,
16 work with the Settlement Administrator on the distribution of settlement funds, and on the
17 compliance hearing. [Donnelly Decl., ¶ 24, Exh. 2.]

18 In pursuing this matter, Class Counsel incurred total attorney’s fees of \$85,055, the
19 lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a
20 successful conclusion (108.4 attorney and paralegal hours), and the requested attorney hourly
21 rates are reasonable and comport with hourly rates charged by other attorneys with similar
22 experience in this practice area in California. [Donnelly Decl., ¶¶ 25-32; Exh. 3.] On a lodestar
23 basis, the fee request of \$120,000 results in a very reasonable 1.41 modifier over the base
24 lodestar, which is entirely in line with California precedent. [Donnelly Decl., ¶¶ 31-32.]
25 Indeed, California courts routinely approve multipliers in the in the 2-4 range to compensate
26 for the time and risk of class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43,
27 66 (affirming attorneys’ fee award including an upward multiplier of 2.5); Wershba, 91
28 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or even higher.”); City of Oakland

1 Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).) Class
2 Counsel submits that the requested 1.41 multiplier effectively operates to show that the
3 percentage fee request is reasonable considering the challenges presented in this contingency
4 fee matter, and appropriately compensates Class Counsel for the contingent risk assumed and
5 delay in payment during the approximately three plus years counsel will have been
6 representing Plaintiff by the time of final disbursement. Thus, the multiplier results in a fee
7 constituting a fair return on the contingency.

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

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

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

23 **1. The Results Achieved.**

24 Class Counsel obtained an excellent result in this case for the Class Members. The
25 Settlement provides real monetary benefits to the Class Members, and the Settlement is
26 particularly advantageous to the Class Member because the proceeds will be distributed
27 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
28 Considering many individual claims would be very modest and would not be cost-effective

1 to pursue successfully, the Settlement provided them with fair compensation for their claims.
2 Moreover, the absence of any objection to either the Settlement or the attorney's fee request
3 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated
4 by the fact that only one class member opted out. Additionally, the settlement amounts to a
5 substantial percentage of the maximum value of the amount the Class might have obtained if
6 it had tried the case and recovered on all theories seeking recovery of wages and penalties.
7 "It is well-settled law that a cash settlement amounting to only a fraction of the potential
8 recovery does not per se render the settlement inadequate or unfair." In re Omnivision
9 Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

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

11 At the time of filing the complaint, Class Counsel recognized that they would have to
12 expend a substantial amount of time and advance significant costs to prosecute a statewide
13 class action suit with no guarantee of compensation or reimbursement, in the hope of
14 prevailing against a sophisticated company represented by first-rate attorneys. Despite
15 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
16 of class certification and the ability to prove class-wide and individual damages. In light of
17 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant
18 would dig in and attempt to bury their small firm in work. Given the small size of Class
19 Counsel's firm, not receiving any compensation for several years while simultaneously
20 advancing litigation costs posed considerable risk and difficulty. [Donnelly Decl., ¶¶ 33-34.]

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

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

1 risky and difficult case.

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

3 There is a substantial difference between the risk assumed by attorneys being paid
4 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
5 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d
6 1249, 1256. The attorney working on a contingent basis can only log hours while
7 working without pay towards a result that will hopefully entitle him to a market fee
8 considering the risk and other factors of the undertaking. Id. at 1257. Otherwise, the
9 contingent fee attorney receives nothing. Id. In this case, Class Counsel subjected
10 themselves to this risk in this all or nothing contingent fee case wherein the necessity
11 and financial burden of private enforcement makes the requested award appropriate.

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

21 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
22 the investment of unnecessary time in a case, and the adverse resolution of any one of several
23 difficult issues present in this matter could have doomed the entire effort. As discussed, the
24 attorney's fees in this case were not only contingent but fairly risky, and there was always a
25 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.
26 [Donnelly Decl., ¶¶ 33-34.] Accordingly, the contingent nature of the fee and the financial
27 burdens on Class Counsel and Plaintiff also support the fee requested.

28 /////

1 **5. Awards in Other Cases**

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

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

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

26 Per the Donnelly Declaration, Class Counsel incurred a total of \$6,523.30 in
27 expenses in connection with this matter. These expenses include amounts paid for court
28 filing fees, service of process, postage, expert fees, and mediation fees, all of which are

1 costs normally billed to and paid by the client. These costs were reasonably incurred in
2 the prosecution of this matter, and should be reimbursed in full. Plaintiff respectfully
3 requests that the Court authorize reimbursement of counsel's costs in the amount of
4 \$6,523.30. [Donnelly Decl., ¶¶ 35-36.]

5 **VIII. CONCLUSION**

6 For all the foregoing reasons, Plaintiff Gerardo Gutierrez respectfully requests that the
7 Court grant this motion and grant final approval of the proposed class action settlement and
8 approve the payment of PAGA penalties to the State. Plaintiff further requests the Court approve
9 payment of the Settlement Administrator's fees and expenses, approve the requested class
10 representative enhancement payment, approve the award of attorney's fees and costs as requested,
11 and enter judgment in this action. Finally, Plaintiff request the Court set a final compliance
12 hearing for September 16, 2026, or a later date convenient for the Court.

13
14 Dated: December 19, 2024

LAW OFFICES OF J. KIRK DONNELLY, APC

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17 J. Kirk Donnelly
18 Attorneys for Plaintiff
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