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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

**CORINTHIAN INTERNATIONAL WAGE
AND HOUR CASES**

Coordinated Actions:

*Turner v. Corinthian International Parking
Services, Inc.*

Santa Clara Superior Court
Case No. 16CV292208

*Rocquemore v. Corinthian International
Parking Services, Inc.*

Alameda Superior Court
Case No. RG 16801065

Case No. JCCP 4886

Honorable Theodore C. Zayner

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: May 15, 2024
Time: 1:30 p.m.
Dept.: 19

Turner Complaint Filed: June 11, 2015
Rocquemore Complaint Filed: Jan. 21, 2016

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After nine years of intense litigation, Plaintiffs Adrian Turner and Mykale Rocquemore, on behalf of the Class, Aggrieved Employees, and the State of California (“Plaintiffs”) request that the Court take the last remaining step and grant final approval of the Class Action Settlement Agreement, as amended (“Settlement”), with Defendant Corinthian International Parking Services, Inc. (“Defendant”).¹

The Settlement was reached after years of extensive motion practice, including a successful class certification motion, voluminous formal and informal discovery, an appeal, and three separate mediations. The Settlement is shaped by Defendant’s ability to pay but nevertheless provides sound recoveries to the Class Members. The Class has responded favorably, with no objections and just one opt-out.

The Settlement falls well within the range of reasonableness and satisfies all the criteria for final approval under California law. Accordingly, the Court should (1) finally approve the proposed Settlement; (2) finally approve Plaintiffs as Class Representatives; (3) finally approve Schneider Wallace Cottrell Konecky, LLP (“SWCK”), Lawyers for Justice PC (“LFJPC”) and Justice Law Corporation (“JLC”) as Class Counsel; (4) finally approve an allocation of \$50,000 for PAGA penalties; (5) finally approve service awards of \$15,000 to Plaintiffs; (6) finally approve an award of attorneys’ fees to Class Counsel in the amount of \$350,000, plus reimbursement of Class Counsel’s out-of-pocket expenses in the amount of \$112,256.78; (7) finally approve Atticus as Settlement Administrator and approve the costs of settlement administration in the amount of \$39,898; and (8) approve the proposed implementation schedule, set forth in the Notice of Motion, for relevant dates and deadlines regarding the administration of the Settlement.

II. BACKGROUND

A. Factual Background and Procedural History

Plaintiffs set forth the factual background of this action and the procedural history, up to the preliminary approval motion, in the memorandum of points and authorities accompanying Plaintiffs’ amended motion for preliminary approval. Plaintiffs do not repeat that background and history here but incorporate it by reference, noting in particular that the Court granted class certification on August 30, 2019.

¹ Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Settlement, attached as **Exhibit 1** to the October 25, 2023 Declaration of Scott L. Gordon.

1 Plaintiffs filed their amended motion for preliminary approval of the Settlement on August
2 21, 2023.² The Court issued a minute order requiring minor changes to the Settlement on September
3 13, 2023. In particular, the Court required that the parties implement a PAGA Allocation that is
4 separate from, and not included in, the Net Settlement Amount to be paid to the Participating Class
5 Members, and that PAGA awards are calculated based on time worked in the PAGA Period. The
6 Settlement required related amendments to clarify that Class Members that opt out will still be paid
7 a PAGA Share and subject to the release of PAGA claims (if they are also PAGA Group Members)
8 and implement separate, distinct releases for Participating Class Members and PAGA Group
9 Members. Additionally, the Court required minor changes to the Notice of Settlement (“Class
10 Notice”).

11 The parties executed the Second Amendment to Class Action Settlement Agreement
12 (“Second Settlement Amendment”) on or about October 20, 2023, inclusive of a revised Class
13 Notice, to address the issues identified in the minute order. The Parties filed the Settlement, as
14 amended by the First and Second Settlement Amendments, on October 27, 2023. With Second
15 Settlement Amendment, the parties revised the Class Notice with four principal changes: (1) it
16 explains that the Class Member may not opt out of the PAGA component of the Settlement; (2) it
17 provides the Settlement Share (i.e., the Class Member’s share of the class component of the
18 Amended Settlement) and the number of workweeks the Settlement Share is based upon, and
19 separately, the PAGA Share, if any, and the number of workweeks the PAGA Share is based upon;
20 (3) it sets forth the separate releases for Participating Class Members and PAGA Group Members;
21 and (4) it includes the Court’s required language to provide instructions for Class Members to appear
22 at the Final Approval Hearing.

23 After consideration of the supplemental materials, the Court granted the motion for
24 preliminary approval via minute order on November 8, 2023, and entered the formal Order Granting
25 Plaintiffs’ Amended Motion for Preliminary Approval of Class Action Settlement (“Preliminary
26 Approval Order”) on November 14, 2023.

27 **B. Notice of the Settlement**

28 Atticus disseminated the Class Notice via U.S. Mail, in English and Spanish formats, to the
29

30 ² Plaintiffs originally filed a motion for preliminary approval of the Settlement on May 23, 2023.
31 Cottrell Decl., ¶ 41. The parties continued the date of the hearing on Plaintiffs’ motion for preliminary
32 approval so that they could execute an amendment to ensure that Class Members receive at least a
portion of their settlement awards before the full funding of the Gross Settlement Amount. *Id.*, ¶¶ 41-
42. The parties entered into the resulting Amendment to Class Action Settlement Agreement (“First
Settlement Amendment”) on July 28, 2023. *Id.*, ¶ 43.

1 3,372 Class Members, on March 25, 2022. Bridley Decl., ¶¶ 4-6. Prior to the initial mailing, Atticus
2 completed required data extraction and checked the addresses provided by Defendant through the
3 National Change of Address System. *Id.*, ¶ 5. The Class Notice informed Class Members of their
4 rights and options and the deadlines by which they were required to act on these options, the terms
5 of the Settlement, how their Settlement Shares would be calculated from the Net Settlement Amount,
6 and contact information for Class Counsel, Defendant's Counsel, and Atticus, among other things.
7 *Id.*, ¶ 6. The Class Notice included each Class Member's Settlement Share and PAGA Share, and
8 the number of workweeks on which those shares would be calculated, assuming 100% participation.
9 *Id.*

10 Of the 3,372 Class Notices mailed, 622 were returned to Atticus as undeliverable. *Id.*, ¶ 7.
11 Six of the returned Notices included forwarding address information, and Atticus promptly remailed
12 them to the forwarding addresses. *Id.* Using skip tracing techniques, Atticus obtained new addresses
13 with respect to 402 of the returned Notices, and Atticus promptly remailed them to the new
14 addresses. 48 of the remailed Class Notice Packets were returned to Atticus a second time. *Id.* 89
15 undeliverable records were not traced because the associated Class Notices were received by Atticus
16 at or after the Class Member response deadline; these records will instead be traced prior to award
17 distribution following final approval. *Id.* In total, Atticus successfully disseminated Class Notice
18 Packets to 3,110 Class Members, or 92.18% of the Class. *Id.*

19 Class Members who did not wish to participate in the Settlement were required to mail a
20 written and signed Election Not to Participate in Settlement to Atticus, postmarked no later than
21 February 5, 2024. Atticus received one exclusion request, from Christopher Wong. *Id.*, ¶ 10. Class
22 Members could also provide written objections to the Settlement to Atticus, but Atticus did not
23 receive any Settlement objections. *Id.*, ¶ 11.

24 Atticus took extra efforts to ensure Class Members received notice, and provided ample
25 access for Class Members to contact Atticus about the Settlement process. Atticus created a
26 Settlement website, for which the URL was provided in the Class Notice, that hosted a generic form
27 of the Notice, the full Settlement, and the approval papers. *Id.*, ¶ 8. Atticus implemented a toll-free
28 call center in conjunction with the Class Notice mailing. *Id.*, ¶ 9. The toll-free number was printed
29 in the Class Notice and is answered by live customer service representatives during Atticus' normal
30 business hours. *Id.* Class Members have the opportunity to leave a voicemail message and receive a
31 return call if representatives are unavailable and for calls placed after hours. *Id.* Atticus has received
32 30 calls to date. *Id.*

C. Implementation of the Settlement

If final approval is granted, the Effective Date of the Settlement will occur when the Court enters the Order Granting Final Approval of Class Action Settlement and Entering Final Judgment (assuming that no objections or appeals have been filed to contest final approval). Settlement Agreement, ¶¶ I.P, I.R. After the Effective Date, Defendant will fund the Settlement according to the implementation schedule. *Id.*, ¶ III.F.9. In particular, Defendant will fund \$600,000 within 15 days of the Effective Date, and the remaining \$450,000 plus amounts necessary to pay Defendant's share (employer-side only) of payroll taxes, quarterly over a two-year period, beginning 90 days after the \$600,000 has been funded. *Id.*

Within 15 days after Defendant funds the first \$600,000 installment of the Gross Settlement Amount, Atticus will make the first round of payments. With the first round of payments, Atticus will pay 57% of the amounts due to Participating Class Members, PAGA Group Members, the LWDA, Plaintiffs, Class Counsel, and the Settlement Administrator. *Id.*, ¶ III.F.10 (as amended). Given that employer-side payroll taxes will only be paid upon the full funding of the Gross Settlement Amount, Atticus may pay employer-side payroll taxes for the first round of payments from the Class share of the first \$600,000 installment, and payments to Participating Class Members may be adjusted accordingly. See Preliminary Approval Order, 4:15-19. These monies will be recouped from the later payments of the employer-side payroll taxes by Defendant and ultimately paid out to Participating Class Members. *Id.*

Within 15 days after Defendant completes funding of the remaining \$450,000 plus amounts necessary to pay Defendant's share of payroll taxes, Atticus will make the second round of payments. With the second round of payments, Atticus will pay 43% of the amounts due to Participating Class Members, PAGA Group Members, the LWDA, Plaintiffs, Class Counsel, and the Settlement Administrator. *Id.*, ¶ III.F.10 (as amended). Additionally, Participating Class Members will be paid out for the employer-side payroll taxes, if any, that were advanced from the Class share of the first \$600,000 installment.

Settlement checks will be negotiable for 180 days following issuance. *Id.*, ¶ III.F.11. Atticus will issue a reminder postcard to any Participating Class Member whose Settlement Share check is not cashed within 120 days after mailing. *Id.* Any funds from uncashed checks will be re-distributed to those Class Members who cash their checks and/or distributed to California Rural Legal Assistance Fund as the proposed *cy pres* beneficiary, if the amount is less than \$100,000 or if there

are funds leftover from the redistribution.³ *Id.*

III. CLASS-ACTION SETTLEMENT APPROVAL PROCEDURE

A class action may not be dismissed, compromised, or settled without the approval of the court. See California Civil Code § 1781(f); California Rule of Court 3.769; *see also* Federal Rule of Civil Procedure 23(e). California Rule of Court 3.769 describes three distinct steps for approval of class action settlements by California courts: (1) preliminary approval of the proposed settlement after submission of a motion for preliminary approval, the proposed class action settlement, and the proposed class notice; (2) mailing of notice of the settlement to all affected members of the settlement class; and (3) a final settlement approval hearing at which members of the settlement class may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. This procedure is similar to the procedure and criteria for approval of class actions under federal law.⁴

Here, the Court has already granted preliminary approval, notice has been mailed to the Class, and the Class has responded favorably. With this motion, Plaintiffs request that the Court take the final step in the settlement approval process by granting final approval of the Settlement, the PAGA Allocation, the Class Representative Service Payments, and Plaintiffs' application for payment of Class Counsel's attorneys' fees and costs.

IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

A. Final Approval of the Settlement is Appropriate

The decision to approve or reject a proposed settlement is committed to a court's broad discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "As long as the Court has sufficient information about the nature and magnitude of the claims being settled, as well as impediments to recovery, the Court should be able to make an independent assessment of the reasonableness of the terms to which the parties have agreed. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. Plaintiffs provide an abundance of information regarding the claims being settled, and recognize and appreciate the risks of continued litigation.

³ Plaintiffs and Plaintiffs' Counsel do not have any financial or business relationships with CRLA. Cottrell Decl., ¶ 64.

⁴ It is also endorsed by the nation's leading class action commentator, Professor Herbert Newberg, for safeguarding class members' procedural due process rights and enabling the court to fulfill its role as the guardian of the interests of the class. See *Newberg on Class Actions*, § 11:24 (4th Ed. 2002); *Manual for Complex Litigation*, § 21:63 (4th Ed. 2006).

1 **1. The best practicable notice was provided to the Class in accordance with the**
2 **Court-approved notice process**

3 The parties successfully administered notice to the overwhelming majority of the Class. The
4 notice must be the best “practicable under the circumstances including individual notice to all
5 members who can be identified through reasonable effort.” *Torrissi v. Tucson Elec. Power Co.* (9th
6 Cir. 1993) 8 F.3d 1370, 1374; *Wershba*, 91 Cal.App.4th at 251 (the standard is whether the notice
7 has a reasonable chance of reaching a substantial percentage of the class members). “[N]otice mailed
8 by first class mail has been approved repeatedly as sufficient notice of a proposed settlement.”
9 *Langford v. Devitt* (S.D.N.Y. 1989) 127 F.R.D. 41, 45; *Grunin v. International House of Pancakes*
10 (8th Cir. 1975) 513 F.2d 114, 121.

11 Atticus followed all the procedures set forth in the Court-approved notice plan. Pursuant to
12 the Court’s Preliminary Approval Order, the Class Notice was mailed to the Class in accordance
13 with the terms of the Settlement. Cottrell Decl., ¶ 72. The Class Notice provides a description of the
14 case and the proposed Settlement, informs Class Members of their shares and workweeks, explains
15 how Class Members could receive payment under the Settlement or exercise their right to opt-out,
16 object, or dispute their workweek amount, and identifies Class Counsel. *Id.* With these measures,
17 reasonable steps have been taken to ensure that all members of the Class received the Class Notice.
18 Atticus also set up a Settlement website. *Id.* Accordingly, the notice process satisfies the “best
19 practicable notice” standard.

20 **2. The terms of the Settlement are fair reasonable, and adequate**

21 For final approval, courts must ensure that “the agreement is not the product of fraud or
22 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
23 whole, is fair, reasonable and adequate to all concerned.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998)
24 150 F.3d 1011, 1027. A presumption of fairness exists where: (1) the settlement is reached through
25 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court
26 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
27 objectors is small. *Dunk*, 48 Cal.App.4th at 1802. All four of these conditions are satisfied here.

28 **a) The Settlement was reached after extensive investigation, discovery,**
29 **and analysis of the class claims.**

30 The proposed Settlement was reached after nine years of intense litigation and three
31 mediations. Cottrell Decl., ¶ 73. Class Counsel investigated the applicable law and the facts in this
32 case and extensively analyzed the potential damages that might be recovered following the exchange
of documents and information with Defendant. *Id.*, ¶ 74. Defendant produced vast amounts of formal

1 and informal discovery including timekeeping and payroll information, as well as data concerning
2 the entire Class, including number of workweeks and other information. *Id.* Class Counsel used the
3 timekeeping and payroll data produced by Defendant to determine the size and scope of the Class
4 and perform an in-depth analysis of Defendant's exposure. *Id.*, ¶ 75.⁵

5 As part of the settlement discussions, Defendant also provided relevant financial records and
6 Plaintiffs worked with Kenneth Creal, a forensic accountant, to determine an amount Defendant was
7 capable of paying for a substantial settlement while remaining financially solvent. *Id.*, ¶ 76. These
8 records and Mr. Creal's analysis confirmed that Defendant only had approximately \$3.8 million cash
9 on hand (as of December 31, 2021), and that if Defendant continues to lose money, it will simply
10 deplete that cash and decrease its ability to fund a settlement. *Id.* Defendant's financial condition
11 limits its ability to pay a larger settlement amount, and thereby reinforces the reasonableness of the
12 Settlement. See *Dunk*, 48 Cal.App.4th at 1801 [noting a court must include the risk of insolvency
13 and inability to pay a larger settlement in its assessment of the reasonableness of a class action
14 settlement]; see also *In re Washington Pub. Power Supply Sys. Sec. Litig.* (D. Ariz. 1989) 720 F.
15 Supp. 1379, 1387, *aff'd sub nom. Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268
16 [analyzing defendant's ability to pay a judgment larger than the amount provided by the proposed
17 settlement in settlement approval context].

18 The Gross Settlement Amount here represents approximately 5% of the total estimated
19 undiscounted exposure for the substantive Class claims. Cottrell Decl., ¶ 77. This is a recovery that
20 falls within the range of reasonableness, particularly given Defendant's financial condition. Cottrell
21 Decl., ¶ 78; see, e.g., *Viceral v. Mistras Grp., Inc.* (N.D. Cal. 2016) 2016 U.S. Dist. LEXIS 140759
22 at *7 [approving wage and hour settlement which represented approximately 8% of the total verdict
23 value]; *Balderas v. Massage Envy Franchising, LLP* (N.D. Cal. 2014) 2014 WL 3610945 at *5
24 [gross settlement amount of 8% of maximum recovery and net settlement amount of 5%]; *In re*
25 *Omnivision Techs. Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1042 [approving settlement of 6-8%
26 of estimated damages]; *In re Uber FCRA Litig.* (N.D. Cal. 2017) 2017 U.S. Dist. LEXIS 101552 at
27 *23-24 [granting preliminary approval to class action settlement where gross settlement fund was
28 7.5% of total possible verdict]; *Cruz v. Sky Chefs, Inc.* (N.D. Cal. 2014) 2014 WL 7247065 at *5
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30
31 ⁵ Courts routinely approve settlements that provide a fraction of the maximum potential recovery.
32 See, e.g., *Officers for Justice v. Civil Serv. Com.* (9th Cir. 1982) 688 F.2d 615, 628. "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 Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213
F.3d 454, 459.

1 [granting final approval where gross settlement amount represented 8.6% of the maximum potential
2 recovery and net settlement amount represented approximately 6.1% of maximum potential
3 recovery].

4 **b) Litigation of this action not only would delay recovery, but would be**
5 **expensive, time-consuming, and would involve substantial risk.**

6 Throughout this intense litigation, Defendant has vigorously contested Plaintiffs' claims and
7 denied liability. Cottrell Decl., ¶ 79. Defendant generally and specifically denies any and all liability
8 or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or
9 admissions of liability of any sort, and contends that for any purpose other than settlement, the Class
10 Action is not appropriate for class or representative treatment. *Id.*; Settlement, ¶ II.T.

11 Plaintiffs and Plaintiffs' Counsel have taken into account the uncertainty and risk of further
12 litigation, the potential impact of arbitration agreements signed by Plaintiffs and Class Members,
13 the potential outcome, and the difficulties and delays inherent in such litigation. Cottrell Decl., ¶ 80.
14 Plaintiffs and Plaintiffs' Counsel are also mindful that, having reviewed Defendant's financial
15 records with a certified public accountant, it is likely that taking this case to trial and obtaining a
16 judgment would likely bankrupt Defendant, resulting in the Class and the State receiving nothing,
17 as discussed *supra*. *Id.* While Plaintiffs believe that they would have prevailed on these issues and
18 others, they also realistically recognize the risk that a fact finder may have found for Defendant on
19 one or more of these issues and or found damages to be significantly less than what Plaintiffs claim.
20 *Id.*, ¶ 81.

21 If this case were to go to trial as a class action, it is estimated that Class Counsel's further
22 fees and costs would easily exceed \$1,000,000. *Id.*, ¶ 82. Litigating the class claims in this action
23 would require substantial additional preparation and discovery and ultimately would involve the
24 depositions of Class Members and experts, the presentation of percipient and expert witnesses at
25 trial, as well as the consideration, preparation, and presentation of voluminous documentary
26 evidence and the preparation and analysis of expert reports. *Id.* In contrast to the risk and uncertainty
27 of continued litigation, the Settlement will yield a prompt, certain, and substantial recovery for Class
28 Members. Such a result will benefit the parties and the court system. *Id.*, ¶ 84.

29 **c) The proposed Settlement is well within the range of reasonableness.**

30 A review of the Settlement reveals the fairness of its terms. See *id.*, ¶ 85. The estimated Net
31 Settlement Amount of \$467,845, derived from a Gross Settlement Amount of \$1,050,000, will result
32 in fair and just relief to the Class Members. *Id.* The average gross recovery for the 3,373

1 Participating Class Members is \$311.30, and the average net recovery per Class Member is \$138.70.⁶
2 *Id.*

3 It is well-settled that a proposed settlement is not to be measured against a hypothetical ideal
4 result that might have been achieved. *See, e.g., 7-Eleven Owners for Fair Franchising v. Southland*
5 *Corp.* (2000) 85 Cal.App.4th 1135, 1150 [quoting *Linney v. Cellular Alaska Partnership* (9th Cir.
6 1998) 151 F.3d 1234, 1242 with approval: “This court has aptly held that ‘it is the very uncertainty
7 of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
8 settlements. The proposed settlement is not to be judged against a hypothetical or speculative
9 measure of what might have been achieved by the negotiators.”].

10 This wage and hour case deals with non-exempt employees (drivers) who typically are
11 compensated at relatively low wage levels. In cases such as this this, courts routinely approve
12 settlements where the average payout is less than \$200 dollars per person. *See, e.g., Rivas v. BG*
13 *Retail, LLC* (N.D. Cal. Jan. 16, 2020) 2020 U.S. Dist. LEXIS 8712, 2020 WL 264401, at *15-16
14 [“the average recovery in this case (\$170.59) is comparable to other wage and hour class action
15 settlements approved by courts in California”]; *Miceli v Intern. Coffee & Tea, LLC* (Cal. Super. May
16 31, 2017) No. BC557239, 2017 WL 2840618, at *4 [approving settlement where average settlement
17 payment was \$113.03]; *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 U.S. Dist.
18 LEXIS 80776, 2012 WL 2117001, at *17 [report and recommendation adopted, 2012 U.S. Dist.
19 LEXIS 187697, 2012 WL 13040405] [describing average class recovery of \$198.80 as “good” in
20 wage-and-hour case, compared to similar cases with average recoveries of \$50-60 per class
21 member]. These cases confirm the reasonableness of the sound recovery achieved here.

22 The response of the Class has also been overwhelmingly positive. Cottrell Decl., ¶ 86. The
23 deadline for Class Members to opt-out or submit written objections has passed, and to date, there
24 are no objections and just one opt-out. The lack of objections shows widespread support for the
25 Settlement among the Class. Finally, Class Counsel are experienced and respected class action
26 litigators, and based on their knowledge and expertise in this area of law, believe this Settlement
27 will provide a sound benefit to the Class Members. *See id.*, ¶¶ 6-12, 87. The solid result satisfies
28 any standard for evaluating the fairness of a class action settlement.

31 ⁶ Plaintiffs reported that there were 3,825 Class Members at preliminary approval. The final tally is
32 lower. The award amounts stated here are also slightly different than the award amounts provided in
the Bridley Decl., as the awards stated here take into account the finalized attorney costs and
administration costs.

1 **B. The Proposed Class Representatives' Service Payments Are Reasonable**

2 Plaintiffs have devoted large amounts of their time, across years of litigation, to prosecute
3 the claims and ultimately make this Settlement a reality. Both Plaintiffs responded to several batches
4 of discovery, amounting to hundreds of requests for production, special interrogatories, form
5 interrogatories, and requests for admission. Turner Decl., ¶ 10; Rocquemore Decl., ¶ 10; Cottrell
6 Decl., ¶ 89. Both sat for full-day depositions. *Id.* Both remained committed to the case through three
7 mediations. The requested \$15,000 service awards are well justified.

8 Courts award service payments to advance public policy by encouraging individuals to come
9 forward and perform their civic duty in protecting the rights of the class, as well as to compensate
10 class representatives for their time, effort and inconvenience. *In Re California Indirect Purchases*
11 (1998) 1998 WL 1031494, *11. It is well-established that representative plaintiffs are eligible for
12 reasonable incentive payments to compensate them for the expense or risk they have incurred in
13 conferring a benefit on other members of the class. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
14 *Angeles* (2010) 186 Cal.App.4th 399, 412.

15 Throughout this litigation, Plaintiffs worked with Class Counsel and assisted in the
16 development of the case. Turner Decl., ¶¶ 9-14; Rocquemore Decl., ¶¶ 9-14. They committed vast
17 amounts of time at the pleadings, deposition, discovery, and settlement phases. *Id.* Plaintiffs have
18 taken part in the Settlement decision and remained apprised of the case at all times during the many
19 years of litigation. *Id.*

20 Moreover, Plaintiffs took significant risks in coming forward to represent the interests of
21 their fellow employees. Turner Decl., ¶ 17; Rocquemore Decl., ¶ 17. They have subjected
22 themselves to risk with regards to future employment opportunities and their reputation in the
23 community by their participation in this litigation. *Id.* Their service as the named Plaintiffs in a wage
24 and hour class action lawsuit may be discerned by potential employers and members of the
25 community, creating a very real risk of future repercussions, particularly with respect to his future
26 job opportunities. Additionally, Plaintiffs agreed to a general release. Turner Decl., ¶ 18;
27 Rocquemore Decl., ¶ 18.

28 As a result of Plaintiffs' efforts and his willingness to step forward, the Class Members will
29 receive significant recoveries if the Settlement is approved. On the other hand, if Plaintiffs did not
30 serve as Class Representatives or assist in the prosecution of this case, the matter would never have
31 been brought on a class basis. The Class Members would not be getting any recovery, and
32 Defendant's alleged conduct would have gone unchecked. Plaintiffs have committed large amounts

of their time to this case and assumed significant risk to obtain the favorable result. The requested \$15,000.00 Class Representative Service Payments are well warranted under the circumstances.

C. The Proposed Payment of Attorneys' Fees and Costs is Reasonable and Should Be Finally Approved

A one-third fee award (\$350,000) is plainly appropriate here, given Class Counsel's skill and commitment in prosecuting this case for almost nine years. A one-third award is also eminently reasonable compared to Class Counsel's lodestar amount of approximately \$1,343,931, which results in a fractional multiplier of 0.26. See Cottrell Decl., ¶ 95.

The California Supreme Court has "join[ed] the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, ... the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503. The object of a common fund award is to set a fee that approximates the probable terms of a contingent fee contract negotiated by a sophisticated lawyer and client in comparable commercial litigation, as evidenced by awards in other cases, in an amount intended to "mimic" the market. *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 47-50.

In *Laffitte*, the Court approved the award of attorneys' fees in the amount of one third of the gross \$19 million settlement (e.g., an award of \$6.33 million) under the common fund theory in a wage and hour action. 1 Cal.5th at 503. By awarding counsel a percentage of the total recovery, rather than fees based on hours worked, the common fund method encourages attorneys to efficiently litigate to achieve the best results possible for the class. See *Laffitte*, 1 Cal.5th at 492-494. Indeed, "the percentage method is generally favored in common fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalties it for failure." *Id.* at 493 (quoting *In re Rite Aid Corp. Securities Litig.* (3d Cir. 2005) 396 F.3d 294, 300 (internal quotations omitted)).⁷

⁷ See also *In re Capacitors Antitrust Litig.* (N.D. Cal. Sept. 21, 2018) No. 3:17-md-02801-JD, 2018 WL 4790575, at *2 ("Indeed, the percentage of the fund method is *preferred* when counsel's efforts have created a common fund for the benefit of the class") (collecting cases); *Fleury v. Richemont N. Am., Inc.* (N.D. Cal. Apr. 14, 2009) No. C-05-4525 EMC, 2009 WL 1010514, *3 ("Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation...; [i]f this 'bonus' methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing") (internal citation omitted); *Swedish Hosp. Corp. v. Shalala* (D.C. Cir. 1993) 1 F.3d 1261,

1 In California State Courts, one-third of the global fund is the standard benchmark for
2 attorney fee awards. See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11. California
3 state and federal courts routinely uphold attorneys' fees equaling one third of the common fund. See,
4 e.g., *id.*; *Laffitte*, 1 Cal.5th at 506 ("33 1/3 percent of the common fund is consistent with, and in the
5 range of, awards in other class action lawsuits"); Eisenberg & Miller, Attorney Fees in Class Action
6 Settlements: An Empirical Study, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004,
7 at 35 (independent studies of class action litigation nationwide conclude that fees representing one
8 third of the total recovery are consistent with market rates). Countless California Superior Courts
9 have granted attorneys' fees in this range.⁸ Moreover, federal courts and secondary sources confirm
10 that attorneys' fees in this range are reasonable.⁹ These authorities establish that Class Counsel's
11 request for one third of the Gross Settlement Amount is within the range customarily approved by
12 courts in California and should be approved.

13 Among the factors considered in determining whether the requested fee percentage is
14 reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of
15 plaintiff's counsel and the quality of work performed by plaintiff's counsel; (4) the contingent nature
16 of the fee and the financial burden carried by the plaintiff; and (5) awards made in similar cases.
17 *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-50. All these factors support an
18 award here of one third of the common fund.

19 Class Counsel have achieved a sound result under extremely difficult circumstances, in the
20 face of extensive risks of further litigation. The Settlement is the result of the skill that Class Counsel
21 brought to the litigation, which involved battling through voluminous discovery, prevailing on the
22 motion for class certification, the motion to compel arbitration, and the appeal, and finally settling
23

24 1271 ("a percentage of the fund method is the appropriate mechanism for determining the attorney
25 fees award in common fund cases.").

26 ⁸ See, e.g., *El Pollo Loco Wage and Hour Cases* (Orange County Super. Ct., JCCP No. 4957, Jan. 31,
27 2020) (approving 33.3% fee award in wage and hour class action); *Asalati v. Intel Corp.* (Santa Clara
28 Super. Ct., No. 16cv302615, Oct. 29, 2018) (approving 33.3% fee award); *Ochoa v. Haralambos*
29 *Beverage Co.* (Los Angeles Super. Ct., No. BC319588, Feb. 1, 2007) (approving 33.3% fee award);
30 *Big Lots Overtime Cases* (San Bernardino Super. Ct., JCCP No. 4283, Feb. 4, 2004) (approving
31 33.3% fee award); *Barela v. Ralph's Grocery Company* (Los Angeles Super. Ct., No. BC070061,
32 June 5, 1998) (same).

⁹ See, e.g., *Marshall v. Northrop Grumman Corp.* (C.D. Cal. Sep. 18, 2020) No. 16-CV-6794 AB
(JCx), 2020 U.S. Dist. LEXIS 177056, at *23 ("An attorney fee of one third of the settlement fund is
routinely found to be reasonable in class actions."); *McGrath v. Wyndham Resort Dev. Corp.* (S.D.
Cal. Jan. 30, 2018) No. 15cv1631 JM (KSC), 2018 U.S. Dist. LEXIS 16095, at *21; *Beaver v.*
Tarsadia Hotels (S.D. Cal. Sept. 28, 2017) No. 11-CV-01842-GPC-KSC, 2017 U.S. Dist. LEXIS
160214, at *28 ("California courts routinely award attorneys' fees of one-third of the common fund.");
Newberg on Class Actions, §11:24 (4th Ed. 2002); Manual for Complex Litigation, §14:6.

1 the case after the third mediation. Class Counsel litigated these cases on a contingent basis for almost
2 a decade, strongly supporting a one-third award. Cottrell Decl., ¶ 101; see also Ghosh Decl., ¶ 10.
3 Lastly, a one-third award is the standard benchmark for attorney fee awards in California courts. See
4 *Laffitte*, 1 Cal.5th at 506.

5 The trial court may use an abbreviated lodestar “cross-check” for common fund awards if
6 the court considers it useful, and Class Counsel’s lodestar in this case confirms that the requested
7 fee is extremely reasonable. *Laffitte*, 1 Cal.5th at 504-05. Under *Laffitte*, the cross-check is not meant
8 to displace the percentage analysis, but rather to act as a backstop. Here, a one-third award is a
9 fractional multiplier of 0.26 in comparison to Class Counsel’s lodestar of approximately \$1,343,931.
10 Cottrell Decl., ¶¶ 95-99; see also Ghosh Decl., ¶¶ 12-13. For all of these reasons, a fee award in the
11 amount of one-third of the common fund created by Plaintiffs and Class Counsel is fair and
12 reasonable.

13 Finally, Class Counsel also requests reimbursement of their actual out-of-pocket expenses
14 incurred to prosecute this case, in the total amount of \$112,256.78. Cottrell Decl., ¶¶ 104-108; see
15 also Ghosh Decl., ¶ 20; Han Decl., ¶ 14. Attorneys are permitted to recover their litigation costs and
16 expenses under the common fund doctrine. See *Serrano v. Priest* (1977) 20 Cal.3d 25, 35; *Rider v.*
17 *County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6. Class Counsel incurred costs including
18 filing fees, service of process costs, research costs, expert costs, and mediation fees. These expenses
19 were necessary to the effective representation of the Class Members. Cottrell Decl., ¶ 105, Exh. 2;
20 Ghosh Decl., ¶ 20, Exh. B; Han Decl., ¶ 14, Exh. 2. Class Counsel’s costs are reasonable and
21 uncontested, and the Court should approve the reimbursement of costs in the amount of \$112,256.78
22 to Class Counsel.

23 **V. THE PROPOSED IMPLEMENTATION SCHEDULE**

24 Plaintiffs respectfully request that the Court approve the implementation schedule for the
25 Settlement. The implementation schedule is reflected in the Plaintiffs’ Notice of Motion and Motion
26 for Final Approval of Class Action Settlement.

27 **VI. CONCLUSION**

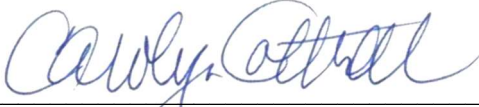
28 For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion for
29 Final Approval and enter the proposed Order Granting Final Approval of Class Action Settlement
30 and Entering Final Judgment submitted herewith.

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Dated: April 23, 2024

Respectfully submitted,


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