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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JOHNNY GARCIA, as an individual on behalf of himself and on behalf of all others similarly situated,

Plaintiff,

v.

WIN-DOR, INC., a California corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: 30-2022-01290278-CU-OE-CXC

Assigned for All Purposes to:
Hon. Melissa McCormick
Dept. CX-104

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AND REQUEST FOR ATTORNEY'S FEES AND COSTS

Date: May 22, 2025
Time: 2:00 p.m.
Dept.: CX-104

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I. **INTRODUCTION**

Plaintiff and Class Representative Johnny Garcia seeks final approval of a non-reversionary class action settlement resolving wage and hour claims on behalf of 859 individuals employed by Defendant Win-Dor, Inc. ("WDI" or "Defendant") as non-exempt employees, either directly or via a staffing agency, in California during the period of November 4, 2018 through July 24, 2023. The proposed $1,025,000 total settlement provides about $610,735 in cash payments to the Class, with an average award of about $711, plus additional amounts payable under PAGA. The remaining balance will cover a modest service award to Plaintiff, settlement administration costs, civil penalties to the state, and reasonable attorney's fees and costs. The parties and their counsel finalized the settlement after extensive and difficult arms-length negotiations overseen by an experienced and highly-regarded mediator. The Court conditionally certified the Class and preliminarily approved the settlement on March 21, 2024. Since then, the Court-approved notice form was mailed to the Class Members and they have reacted very favorably to the settlement. As of the filing of this motion, there are no objections and only one Class Member has requested exclusion.

Class Counsel secured an excellent settlement with Defendant after extensive investigation, litigation, and settlement negotiation and administration, all without any compensation for services rendered or costs expended. The class notice duly informed the class members that Class Counsel would request attorney's fees not to exceed one-third of the Gross Settlement Amount, or $341,666.67, along with reimbursement of no more than $20,000 for actual costs incurred litigating this matter. As of the filing of this motion, *not one Class Member objected* to the proposed fee award. Consistent with the Settlement and notice, Plaintiff now respectfully requests the Court award Class Counsel's fees in the amount of $341,666.67 and costs in the amount of $15,098.33, as described in the Declaration of Nikki Trenner ("Trenner Decl.") filed herewith. The requested attorney's fees are well within the range of reasonableness, especially considering the complex and risky nature of this litigation, the contingent risk assumed, the nearly two-plus year delay in payment and, when subjected to a lodestar crosscheck, reflect an award on the base lodestar with a reasonable 2.09 upward modifier – entirely in line with California precedent.

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

II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

Defendant WDI manufactures windows and doors for homes and businesses throughout Southern California, and is based in Brea. WDI employed Plaintiff Garcia as a non-exempt general warehouse worker from May 2022 to 2023. Plaintiff typically worked 8-11 hours per day, five days per week. [Declaration of Nikki Trenner ("Trenner Decl., ¶ 2.]

Plaintiff alleges WDI committed a number of Labor Code violations. First, he alleges WD rounds all time punches to nearest quarter hour, and that rounding favored WDI in its overall application and systematically deprived Plaintiff and the class members of compensable hours worked. Plaintiff also alleges WDI required employees to don and doff protective gear while off the clock, and that WDI "auto deducted" 30 minutes for employee meal breaks even though employees did not always receive a fully 30 minute lunch break. Plaintiff also alleges meal break violations based on an alleged failure to maintain a compliant written policy for at least part of the class period, and "de facto" violations for missed lunch breaks (especially 2nd meal periods), as well as short and late lunches. He also contends WDI's policies prevented employees from receiving their breaks completely free from all employer control, and they were prohibited from inter alia using social media, taking a nap, leaving the premises, etc., while clocked out on a lunch break. For these same reasons, Plaintiff also contends WDI did not provide proper rest breaks as well. Finally, he alleges he had to purchase his own protective equipment, and us his personal phone for work purposes, all without any reimbursement. [Trenner Decl., ¶ 3.]

Based on these allegations, on November 4, 2022, Plaintiff filed a class action complaint brining claims for (1) unpaid minimum and overtime wages, (2) meal and rest break violations, (3) failure to reimburse expenses, and (4) derivative claims for inaccurate wage statements, failure to pay wages due on separation of employment, and Unfair Competition. On February 16, 2023, Plaintiff filed a first amended complaint that added claims under PAGA based on the same alleged Labor Code violations. [Trenner Decl., ¶ 4.]

WDI has at all times denied Plaintiff's allegations and maintained its payroll policies and procedures comply with California law, that it paid the class members all wages due and that its compensation policies properly compensate the class members for all hours worked. WDI further maintains its and meal/rest break policies likewise comply with California law, and that it provided its employees with all required breaks on a fully compliant basis. WDI likewise argues there was no need for any employee to use a cell phone for work purposes, and no reimbursement is owed for basic work equipment such as boots or gloves. Defendant also strongly contends the case cannot be maintained as any kind of class or representative action, arguing determining the number of potential off the clock hours worked by each class member, or the reasons for any alleged missed or non-compliant breaks, would result in individualized issues predominating and that a trial on a representative basis would be unmanageable. [Trenner Decl., ¶ 5.]

After Plaintiff filed his complaint, the Parties met and conferred on discovery, potential law and motion, and other case management issues, and ultimately agreed to attempt early mediation. The Parties also engaged in extensive informal discovery to facilitate an exchange of information necessary to engage in a meaningful mediation. The Parties then engaged Steve Mehta, Esq., a highly respected mediator with extensive wage and hour class action experience and, in April 2024, participated in a full day mediation with Mr. Mehta. By the end of the day, the Parties were able to reach agreement on all major issues. [Trenner Decl., ¶¶ 6-7.] The Court granted preliminary approval to the settlement on March 24, 2024.

Class Notices initially were mailed to certain class members on April 19, 2024. Shortly thereafter, however, Defendant determined it inadvertently omitted a number of individuals from the class last, and the Parties agreed a remail of the class notice was necessary to the fully, updated class list. The administrator then mailed the notices on February 7, 2025, with a 60-day window (to April 8, 2025) for class members to opt out or object to the proposed settlement. [Declaration of Lluvia Islas ("Islas Decl."), ¶¶ 4-7, 10-12.]

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III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, WDI will pay $1,025,000 into a common fund, the Gross Settlement Amount ("GSA"). Attorney's fees of up to $341,666.67 (1/3 of the GSA), litigation costs of up to $20,000 (only $15,098.33 is requested), settlement administration costs of $11,082.50, a service award to Plaintiff of no more than $7,500, and $30,000 for alleged civil penalties under PAGA,[1] all will be paid from the GSA. The remainder of around $610,735 will be allocated pro rata among the Class Members based on their total weeks worked during the Class Period. No portion of the GSA will revert to WDI. [Trenner Decl., ¶ 8.]

A. Certification of the Settlement Class

The Court conditionally certified a settlement class including all current and former non-exempt employees that worked either directly or via a staffing agency for WDI at any location in California at any time during the Class Period of November 4, 2018 through July 24, 2023. The Settlement Administrator ultimately mailed class notices to 859 individuals identified as members of the class. [Islas Decl., ¶ 7.] Nothing has changed to warrant reconsideration of the Court's certification of the class for settlement purposes.

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates WDI to pay $1,025,000 to resolve the claims of the Settlement, inclusive of attorney's fees and costs. A minimum of approximately $610,735 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that <u>does not</u> require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty Four (24%) percent of each settlement share will be allocated to wages and the remaining Seventy Six (76%) percent will be allocated to expenses, penalties, and interest, which allocation is consistent with WDI's potential liability as discussed below. WDI will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's

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[1] Per PAGA, this will be allocated $22,500 (75%) to the Labor & Workforce Development Agency, and the remaining $7,500 (25%) will go to the eligible Aggrieved Employee (as defined in the Settlement Agreement).

approval, any amounts not claimed (because a class member does not cash a settlement check) will be forwarded to the State Controller's Unclaimed Property Fund. [Trenner Decl., ¶ 9.]

Each participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for WDI during the Class Period while employed in a non-exempt position. Thus, each individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, premium wages for meal/rest break violations, unreimbursed expenses, etc., under applicable law. These methods will ensure each Class Member receives a portion of the settlement funds relative to the value of their potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for WDI and the potential hours worked lost due to off the clock work, the number of missed or non-compliant breaks, and so forth. [Trenner Decl., ¶ 10.]

The average class award will be approximately $711, and the awards will range from approximately $15 to over $3,850. The average PAGA award will be about $20, and PAGA awards will range from about $0.50 to a maximum of about $48. [Islas Decl., ¶¶ 16-17.]

C. <u>Settlement Administration</u>

Phoenix Settlement Administrators, as the Court-approved Settlement Administrator, mailed the Notice Packet to the Class members after making all reasonable effort to ascertain the best mailing address, including running each address through the National Change of Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Islas Decl., ¶¶ 3-8.] The Class Notice, previously approved by the Court, duly informed Class Members of the settlement terms, including the estimated relief each Class Member will receive, the amounts to be requested for attorney's fees and the class representative enhancement awards, and the right to opt out of or object to the settlement. [Islas Decl., ¶ 7, Exh. B.] Phoenix mailed 859 Notice Packets on February 7, 2025. [Islas Decl., ¶ 7.] Ultimately, twenty-one Notice Packets were deemed undeliverable, representing a 97.5% success rate. [Islas Decl., ¶ 9.] The 60-day response window for objecting to the settlement expired on April 8, 2025. [Islas Decl., ¶¶ 10-12.] As of the filing of this motion, Phoenix has received one request for exclusion (for a 99.9% participation rate), and zero objections to the settlement. One dispute was submitted regarding the information used to calculate class member settlement shares, which dispute has been resolved. [Islas Decl., ¶¶ 10-12.]

D. Release of Claims

All Participating Class Members will release WDI from all claims alleged in the Operative Complaint, or that could have been brought based on the factual allegations in the operative complaint, including FLSA and PAGA claims, during the Class Period. The class and PAGA releases are limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the Operative Complaint. [Trenner Decl., ¶ 11.]

E. PAGA Claims and Notice to the LWDA

The Parties allocated $30,000 of the GSA to payment of civil penalties under PAGA, as addressed below, which amount Plaintiff submits is fair, reasonable and adequate, and consistent with PAGA's underlying purposes. Per Labor Code section 2699(*l*)(2), Plaintiff gave notice of the settlement and the approval hearing to the LWDA via its online portal, and further served the motion papers on the LWDA as reflected on the accompanying proof of service. [Trenner Decl., ¶ 12; Exh. 1.]

IV. ARGUMENT

A. Standard of Review for a Class Action Settlement

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

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

B. The Proposed Settlement Merits Final Approval

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

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

The settlement is not the result of fraud or collusion. Rather, the proposed settlement was reached following arm's-length negotiations presided over by Steve Mehta, Esq., a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Trenner Decl., ¶ 7.] Moreover, Plaintiff and his counsel were well-informed about the facts and the law, and counsel Zachary Crosner, Nikki Trenner, and Jamie Serb have years of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Trenner Decl., ¶¶ 28-36.] Defendants likewise were represented by highly-qualified and experienced defense counsel. Both sides advocated vigorously for their clients, and nothing was "left on the table."

2. The Class Reacted Favorably to the Settlement

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and only one Class Member requested exclusion out of 859 settlement class members. [Islas Decl., ¶¶ 10-11.] As many courts recognize, class member reaction to the settlement is one of the most important factors to consider in determining if final approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy") (internal quotation marks omitted).

C. The Proposed Settlement Meets the Kullar Factors and is within the Range of Reasonableness

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

Using that data, Plaintiff's experts estimated WDI's likely maximum exposure approximately $9,775,500, including about $160,000 on the unpaid wage claims, about

$1,868,000 on the meal break claims, about $2,940,000 for the rest break violations, around $186,500 for unreimbursed expenses, $1,505,000 for inaccurate wage statements, and about $3,116,000 in waiting time penalties. [Trenner Decl., ¶ 14.] Plaintiff and his counsel substantially discounted the value of these claims, however, in light of the multiple and considerable risks posed by proceeding with the litigation, as Defendant raised numerous defenses and vigorously defended against these claims.

On the minimum wage issue, Plaintiff claims that he and class members were not paid for all hours worked because WDI's time rounding, donning and doffing, and other de facto policies resulted in "off the clock" work with a corresponding loss of pay. For example, Plaintiff's expert's analysis suggests the time rounding policy favored WDI around 66% of the time, resulting in the loss of over 3,200 compensable hours to the class. In response, WDI argued is timekeeping and payroll practices comply with California law and that any rounding was completely neutral in effect and thus permissible under the law. <u>See's Candy Shops, Inc. v. Superior Court</u> (2012) 210 Cal.App.4th 889. It also argued any donning and doffing of safety equipment, consisting of gloves, goggles, and reflective vests, did not result in any compensable time, and that it otherwise properly paid all non-exempt employees for all hours worked consistent with California law. Per Defendant, any off the clock work the clock was against company policy and done without the WDI's knowledge. <u>White v. Starbucks Corp.</u> (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). WDI also argued, individualized inquiries would be required to determine if any such time was compensable, and class certification would be inappropriate and any PAGA trial would be unmanageable. [Trenner Decl., ¶ 15.]

On the meal break issue, prior to about September 2021, Plaintiff contends WDI's meal policy wasn't compliant and did not inform employees as to the number and timing of their meal periods, nor did it specify 30 minute uninterrupted meal periods. Even after WDI revised that policy, Plaintiff contends it remained problematic in that it still didn't advise employees of the duty-free nature of their meal periods. Coupled with WDI's policies restricting employees from accessing social media while at work, from taking a nap at any point in a shift, from leaving the premises, etc., Plaintiff contends he and the class members received non-compliant meal periods. Plaintiff's expert's analysis supported this conclusion and found approximately a 62-63% violation rate for meal periods. Thus, even if WDI's policies were compliant, it still faced significant exposure for "de facto" violations. For the same reasons, Plaintiff contends WDI's rest break policy likewise was non-compliant and that he and the class members did not receive proper breaks. [Trenner Decl., ¶ 16.]

Defendant denies Plaintiff's contentions, claiming they made meal and rest breaks available to Class Members in compliance with California law, including implementing a Bell Schedule system. Defendant contends their meal and rest break policies are lawful and that Class Members were frequently reminded via training and supervisors, that they were required to take all meal and rest breaks. Defendant also contends that time records and signed declarations demonstrate that Class Members took duty-free, timely meal and rest breaks. Defendant contends their meal and rest break policies and practices comported with the flexibility the *Brinker* court held was integral to California's meal and rest period requirements. Finally, Defendant argued that Plaintiff's meal and rest break claims are not susceptible to common proof, as the claims would require individualized inquiry, including whether there was an unlawful companywide policy, whether employees had the opportunity to take meal and rest periods, whether they voluntarily chose to forego their meal and rest periods, and whether Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant contends these claims are vulnerable to a ruling that class treatment is not appropriate. [Trenner Decl., ¶ 17.]

On the expense reimbursement claims, Plaintiff alleges he and class members were required to purchase their own safety gear such as steel-toed boots, grip gloves, safety goggles, and a reflective vest, without reimbursement. WDI requires employees to use their personal cell phones to access company information and communicate with supervisors but has failed to reimburse them for the use of their personal cell phones. Per WDI, however, the "safety gear" is nothing more than basic work boots, gloves, etc. and not any kind of specialized gear for which an employer must provide reimbursement. As far as cell phone use, WDI argued there would be no conceivable requirement for employees to use their own phone while at work and, to the extent they did, it would have been purely for personal convenience and therefore not reimbursable. [Trenner Decl., ¶ 18.]

Plaintiff's claims for inaccurate wage statements and waiting time penalties are derivative of the unpaid wage claims. Should those claims fail, Plaintiff's claim for inaccurate wage statements and waiting time penalties would also fail. Defendant also contends they would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of past wages. Cal. Code Regs. Tit. 8 § 13520; Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1201. Further, Defendant contends Plaintiff would have to prove that Defendant "willfully" failed to pay Class Members appropriate wages due upon separation of employment. Defendant contends that any failure to pay wages upon separation was not willful. [Trenner Decl., ¶ 19.]

As far as potential PAGA liability, the theoretical penalties totaled at least $5.8 million should Plaintiff prevail and establish the alleged minimum wage violations at issue for each pay period. [Trenner Decl., ¶ 20.] As with the class claims, Plaintiff discounted the potential PAGA penalties for the multi-layered defenses proffered by Defendant on the merits, and further discounted these claims since the Court possesses wide discretion to reduce such penalties even if Plaintiff ultimately prevailed. Labor Code § 2699(e)(2); Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXlS 154590, *8-9 (court reduced the potential penalties by over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a bench trial, the trial court awarded penalties of just $5 per pay period, a 90% reduction, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).

Accordingly, the Parties allocated $30,000 to PAGA penalties, which amount is reasonable and in line with comparable settlements in other class actions in California. Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a $7,500 PAGA payment reasonable when measured against the overall settlement of $345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).

Further, the amount of PAGA penalties should not be evaluated in a vacuum but rather in connection with the total amount be paid to resolve the entire matter, and whether that amount and/or any other relief secured serves PAGA's purposes such as deterring future Labor Code violations.

> Where PAGA claims are settled in the same agreement with the underlying Labor Code claims, courts have also looked to the interplay of the two recoveries to determine whether PAGA's purposes have been served. The *O'Connor* court, for instance, adopted a "sliding scale," noting that "[b]y providing fair compensation to the aggrieved employees as employees and substantial monetary relief, a settlement not only vindicates the rights of the aggrieved employees as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA." In other words, where the settlement of Labor Code claims under Rule 23 provides "robust" relief to the class, it supports a greater reduction in PAGA penalties.

<u>Haralson v. U.S. Aviation Servs. Corp.</u> (N.D. Cal. 2019) 383 F.Supp.3d 959, 972 (internal punctuation and citations omitted).

Plaintiff submits the overall settlement, including the amounts allocated to PAGA, has "a substantial deterrent effect . . . [and] encourages compliance with the specific requirements of the Labor Code, which has the effect of protecting workers from unlawful employment practices and working conditions." <u>Jordan v NCI Grp., Inc.</u> (C.D. Cal. Jan. 5, 2018) 2018 U.S. Dist. LEXIS 25297, at *7-8. Plaintiff notes further that, assuming the LWDA does not comment and/or appear on the proposed. settlement, it suggests "tacit approval" as to its terms vis-à-vis PAGA. <u>Echavez v. Abercrombie & Fitch Co.</u>, 2017 U.S. Dist. LEXIS 141134, at *10 (C.D. Cal. March 23, 2017) ("The Court infers LWDA's non-response is tantamount to its consent to the proposed settlement terms, namely the proposed PAGA penalty amount"); <u>Jennings v. Open Door Mktg., LLC</u>, 2018 U.S. Dist. LEXIS 171356, at *27 (N. D Cal. Oct. 3, 2018) (approving PAGA settlement where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement"); <u>Jordan</u>, 2018 U.S. Dist. LEXIS 25297, at *7 ("Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and no comment or objection has been received"). For these reasons, the PAGA component of the settlement should be approved.

Thus, Defendant raised significant procedural and merits defenses to Plaintiff's claims, any one of which, if successful, could have derailed Plaintiff's case. Accordingly, Plaintiff faced risky issues going forward with this litigation, and given the need to secure class certification, try the case, and deal with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff's counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiff's counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $1,025,000 recovery represents a significant percentage of Defendant's potential exposure and given these risks addressed above, a total recovery for the class of $1,025,000 is a fair result within the range of reasonableness considering all potential outcomes. [Trenner Decl., ¶¶ 21-23.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); 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"); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[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"); 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 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 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and her counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

V. **PLAINTIFF'S ENHANCEMENT**

A modest incentive award for Plaintiff is appropriate under applicable law. See Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from $2,000 to $25,000). He devoted time and resources to the litigation, provided documents, assisted Class Counsel with investigating the claims asserted and in preparing for mediation. The service payment provided to Plaintiff as the class representative is typical in class action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563 F.3d 948, 958-59 (incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.").

Here, the Settlement Agreement provides for an enhancement of up to $7,500.00 to Plaintiff. This 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. 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. He will provide the Court with a detailed declaration for the Final Approval Hearing. [Trenner Decl., ¶ 24.]

VI. **SETTLEMENT ADMINISTRATION COSTS**

The settlement provides for a payment to Phoenix for its services as the Settlement Administrator. As set forth in the Declaration of Lluvia Islas, Phoenix has performed and will continue to perform its required duties through final distribution of the settlement funds and incurred $11,082.50 in fees and expenses. [Islas Decl., ¶ 19.] Accordingly, Plaintiff respectfully requests the Court approve payment of $11,082.50 to Phoenix from the GSA. [Trenner Decl., ¶ 25.]

VII. ATTORNEY'S FEES AND COSTS

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

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

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

Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to obtain, and the settlement provides substantial cash payments to Class Members, with an average award of about $706, and with a maximum award of over $3,800. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement – as of the filing of this motion, there are no objections to the settlement and only one opt out. [Islas Decl., ¶¶ 10-11.]

B. The Requested Fee Award Is Reasonable and Appropriate

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

As part of the Settlement, Defendants agreed not to object to an award of no more than 1/3 of the GSA for attorney's fees, or $341,666.67, and up to $20,000 in reimbursement for litigation costs and expenses (only $15,098.33 is requested). Such a fee is commensurate with what the market would provide for similar services and the Court therefore can most certainly enforce the agreement. As California's Court of Appeal has instructed:

> Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential 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.

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

Here, the parties did not negotiate the inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to the Class was completed. [Trenner Decl., ¶ 26.] The requested fee and cost award was a product of these arms-length negotiations and fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As a result, the fee agreed to by the parties should be approved.

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

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

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

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

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

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

Here, Class Counsel seek a fee award for their successful prosecution and resolution of this action of 1/3 of the total amount recovered by the Class via the lawsuit, or $341,666.67. The percentage requested is justified for the reasons set forth further below, comports with this Court's standard fee award as set forth in the Preliminary Approval Order, and further is in line with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements shows that courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. <u>In re Warner Communications Sec. Litig.</u> (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, <u>Newberg on Class Actions</u> (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

D. <u>A Lodestar Cross-Check Also Supports Class Counsel's Fee Request</u>

To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." <u>Laffitte</u>, 1 Cal.5th at 504. Here, Class Counsel spent 222 hours of time on this matter, resulting in a modest and very reasonable lodestar of $163,310.00.

As is fully detailed in the Trenner Declaration, Class Counsel's efforts included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal research, obtaining Plaintiff's employment records, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other employees of Defendants; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related documents; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (6) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (7) drafting a mediation brief and accompanying damages model after review and analysis of defendant's informal discovery production; (8) attending an all-day mediation; (9) negotiating and drafting the settlement agreement and related documents; (10) drafting the amended complaint; (11) drafting the motion for preliminary approval and supplemental papers re: changing the notice period; (12) administration of the settlement, communications with the Settlement Administrator and settlement class members; (13) drafting the motion for final approval and motion for attorney's fees, and attending the final approval hearing; and (14) extensive communications with the Plaintiff regarding case status, case investigation and document review, mediation, and settlement terms. Additionally, Class Counsel will incur additional time to attend the final approval hearing and following final approval to, inter alia, respond to class member inquiries, work with the Settlement Administrator on the distribution of settlement funds, and on the compliance hearing. [Trenner Decl., ¶ 27, Exh. 2.]

In pursuing this matter, Class Counsel incurred total attorney's fees of $163,310.00 and the lodestar is based on a very reasonable number of hours worked to litigate this matter to a successful conclusion (222.0 attorney hours), and the requested attorney hourly rates are reasonable and comport with hourly rates charged by other attorneys with similar experience in this practice area in California. [Trenner Decl., ¶¶ 28-41.] On a lodestar basis, the fee request of $341,666.67 results in a multiplier of 2.09, which is a modest enhancement entirely in line with California law. [Id.] Indeed, California courts routinely approve multipliers in the in the 2-4 range to compensate for the time and risk of class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).) Class Counsel submits that the requested 2.09 multiplier effectively operates to show that the percentage fee request is reasonable considering the challenges presented in this contingency fee matter, and appropriately compensates Class Counsel for the contingent risk assumed and delay in payment during the approximately three years counsel has been representing Plaintiff. Thus, the multiplier results in a fee constituting a fair return on the contingency.

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

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

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

1. The Results Achieved.

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

2. Class Counsel Bore Considerable Risk.

At the time of filing the complaint, Class Counsel recognized that they would have to expend a substantial amount of time and advance significant costs to prosecute a statewide class action suit with no guarantee of compensation or reimbursement, in the hope of prevailing against a sophisticated company represented by first-rate attorneys. Despite their belief in the merits of Plaintiff's claims, they also knew they faced substantial risks of class certification and the ability to prove class-wide and individual damages. In light of the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's firm, not receiving any compensation for several years while simultaneously advancing litigation costs posed considerable risk and difficulty. [Trenner Decl., ¶¶ 42-43.]

3. The Skill Required and the Quality of Work.

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

4. The Contingent Nature of the Fee and Risk Assumed

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

1256. The attorney working on a contingent basis can only log hours while working without pay towards a result that will hopefully entitle him to a market fee considering the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this risk in this all or nothing contingent fee case wherein the necessity and financial burden of private enforcement makes the requested award appropriate.

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

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

5. Awards in Other Cases

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

F. Class Counsel's Costs and Expenses are Reasonable

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

Per the Trenner Declaration, Class Counsel incurred a total of $15,098.33 in expenses in connection with this matter. These expenses include amounts paid for court filing fees, service of process, expert fees, and mediation fees, all of which are costs normally billed to and paid by the client. These costs were reasonably incurred in the prosecution of this matter, and should be reimbursed in full. Plaintiff respectfully requests that the Court authorize reimbursement of counsel's costs in the amount of $15,098.33. [Trenner Decl., ¶¶ 44-45.]

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VIII. CONCLUSION

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

Dated: April 30, 2025 **CROSNER LEGAL, PC**

By: ______________________________
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