

JAMIE SERB (SBN 289601)
jamie@crosnerlegal.com
NIKKI TRENNER (SBN
nikki@crosnerlegal.com
ZACHARY M. CROSNER (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429

Attorneys for Plaintiff PORTIA BARTLEY

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

PORTIA BARTLEY, as an individual on
behalf of herself and on behalf of all others
similarly situated,

Plaintiff,

v.

UNIVERSAL TELEVISION LLC, a New
York limited liability company;
ENTERTAINMENT PARTNERS
ENTERPRISES, LLC, a Delaware limited
liability company; and DOES 1-100,
inclusive,

Defendants.

Case No.: 22STCV36428

Assigned for All Purposes to:
Hon. Timothy Patrick Dillon
Dept. SSC-15

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

Date: January 13, 2026
Time: 10:00 a.m.
Dept.: SSC-15

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	BACKGROUND/LITIGATION HISTORY.....	3
III.	TERMS OF THE PROPOSED SETTLEMENT.....	4
A.	Certification of the Settlement Class.....	4
B.	The Benefit Conferred on the Settlement Class.....	4
C.	Settlement Administration.....	5
D.	Release of Claims.....	6
E.	PAGA Penalties and Notice to the LWDA.....	6
IV.	ARGUMENT.....	6
A.	The Settlement Is the Product of Arm's-Length, Informed Negotiations.....	7
B.	The Class Reacted Favorably to the Settlement.....	8
C.	The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's Case and the Risks and Costs of Further Litigation.....	8
V.	PLAINTIFF'S ENHANCEMENT AWARD.....	13
VI.	SETTLEMENT ADMINISTRATION COSTS.....	14
VII.	ATTORNEY'S FEES AND COSTS.....	14
A.	The Attorney's Fees Requested Are Fair and Reasonable and Should Be Approved	14
B.	The Requested Fee Award Is Reasonable and Appropriate.....	15
C.	Class Counsel's Fees are Justified When Calculated as a Percentage of the Common Fund.....	16
D.	A Lodestar Cross-Check Also Supports Class Counsel's Fee Request.....	17
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.	19
1.	The Results Achieved.....	19

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

2.	Class Counsel Bore Considerable Risk.....	20
3.	The Skill Required and the Quality of Work.....	20
4.	The Contingent Nature of the Fee and Risk Assumed.....	20
5.	Awards in Other Cases.....	20
F.	Class Counsel’s Costs and Expenses are Reasonable.....	22
VIII.	CONCLUSION.....	23

TABLE OF AUTHORITIES

Page(s)

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	13
<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157	11
<i>In re: American Bank Note Holographics,</i> 127 F.Supp.2d 418 (S.D.N.Y. 2001).....	8
<i>Augustus v. ABM Security Serv., Inc.</i> (2016) 2 Cal.5th 257	9
<u>Blum v. Stenson</u> (1984) 465 U.S. 886	15
<i>Boeing Co. v. Van Gernert</i> (1980) 444 U.S. 472	16
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004	9
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	11
<i>Cazares v. Saenz</i> (1989) 208 Cal.App.3d 279.....	21
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1992) 955 F.2d 1268, <i>cert. denied</i> , 506 U.S. 953.....	6
<i>Cochran v. Schwan's Home Service, Inc.</i> (2014) 228 Cal.App.4th 1137	10
<i>Deposit Guaranty Nat'l Bank, Jackson, Miss. v. Roper</i> (1980) 445 U.S. 326, <u>rehg. den.</u> 446 U.S. 947	14
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	6, 7
<i>Evans v. Jeff D.</i> (1986) 475 U.S. 717	15
<i>Harris v. Marhoefer</i> (9th Cir. 1994) 24 F.3d 16.....	22

1	<i>Hensley v. Eckerhart</i>	
2	(1983) 461 U.S. 424	15
3	<i>Hernandez v. Restoration Hardware, Inc.</i>	
4	(2018) 4 Cal.5th 260	16
5	<i>Jennings v. Open Door Mktg. Inc.</i>	
6	(N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356.....	12
7	<i>Ketchum v. Moses</i>	
8	(2001) 24 Cal.4th 1122	21
9	<i>Laffitte v. Robert Half Int’l., Inc.</i>	
10	(2016) 1 Cal.5th 480	16, 17, 19
11	<i>Lane v. Facebook, Inc.</i>	
12	(9th Cir. 2012) 696 F.3d 811.....	13
13	<i>Lealao v. Beneficial Cal., Inc.</i>	
14	(2000) 82 Cal.App.4th 19	14, 16
15	<i>Levy v. Toyota Motor Sales, U.S.A.</i>	
16	(1992) 4 Cal.App.4th 807	14
17	<i>Mandujano v. Basic Vegetable Prods., Inc.,</i>	
18	541 F.2d 832 (9th Cir. 1976).....	8
19	<i>McKittrick v. Gardner</i>	
20	(4th Cir. 1967) 378 F.2d 872.....	21
21	<i>Moniz v. Adecco USA, Inc.</i>	
22	(2021) 72 Cal.App.5th 56	6
23	<i>In re Omnivision Techs., Inc.</i>	
24	559 (N.D. Cal. 2008).....	20
25	<i>Paul, Johnson, Alston & Hunt v. Gaulty</i>	
26	(9th Cir. 1989 886 F.2d 268, 272).....	19
27	<i>Potter v. Pacific Coast Lumber Co.</i>	
28	(1951) 37 Cal.2d 592	6
	<i>Powers v. Eichen</i>	
	(9th Cir. 2000) 229 F.3d 1249.....	21
	<i>Rider v. County of San Diego</i>	
	(1992) 11 Cal.App.4th 1410	22
	<i>Serrano v. Priest</i>	
	(1977) 20 Cal.3d 25	16, 22

1	<i>Slavkov v. First Water Heater Partners I</i>	
2	(N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303	12
3	<i>Staton v. Boeing</i>	
4	(9th Cir. 2003) 327 F.3d 938.....	14
5	<i>In re Taco Bell Wage and Hour Actions</i>	
6	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557	12
7	<i>Van Bronkhorst v. Safeco Corp.</i>	
8	(9th Cir. 1976) 529 F.2d 943,950.....	6
9	<i>Van Kempen v. Matheson Tri-Gas, Inc.</i>	
10	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182.....	12
11	<i>Vincent v. Hughes Air West, Inc.</i>	
12	(9th Cir. 1977) 557 F.2d 759.....	16, 17
13	<i>In re Warner Communications Sec. Litig.</i>	
14	(S.D.N.Y. 1985) 618 F.Supp. 735.....	17, 22
15	<i>Wershba v. Apple Computer</i>	
16	(2001) 91 Cal.App.4th 224	6, 7, 13, 16
17	<i>White v. Experian Information Solutions, Inc.</i>	
18	(C.D. Cal. 2011) 803 F.Supp.2d 1086	13
19	<u><i>White v. Starbucks Corp.</i></u>	
20	(N.D. Cal. 2007) 497 F.Supp.2d 1080	10
21	Statutes	
22	Cal. Code Regs. Tit. 8 § 13520	11
23	Civil Code section 1542	6
24	Labor Code sections	11
25	Labor Code sections 512, 226.7	9
26	Labor Code § 2699(e)(2).....	11
27	Labor Code section 2699(l)(2)	6
28	Labor Code section 2699, subd. (l)	6
	Other Authorities	
	Cal. Rule of Court 3.769	6, 14

1	Conte, <i>Attorney Fee Awards</i> (2d ed. 1993) § 104.....	17
2	Federal Judicial Center, <i>Managing Class Action Litigation: A Pocket Guide for</i>	
3	<i>Judges</i> (3d ed. 2010), available at http://	
4	www.fjc.gov/sites/default/files/2012/ClassGd3.pdf	13
5	IWC Wage Order	9
6	litigation. H. Newberg & A. Conte, 4 <i>Newberg on Class Actions</i> (4th ed. 2002), §	
7	11.41.....	6
8	Newberg, <i>Newberg on Class Actions</i> (3d ed.) § 14.03	17, 22
9	Wage Order 11, § 7(A)(3).....	9
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Portia Bartley seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 179 individuals
4 who worked for Defendant Universal Television LLC (“UTV” or “Defendant”) all non-exempt
5 COVID production safety term employees who worked for Defendant in California during the
6 Class Period of June 1, 2020 to May 31, 2023. The proposed \$274,500 total settlement provides
7 about \$139,700 in cash payments to the Class, with an average award of about \$780, plus
8 additional amounts payable under PAGA. The remaining balance will cover a modest service
9 award to Plaintiff, settlement administration costs, civil penalties to the state, and reasonable
10 attorney’s fees and costs. The parties and their counsel finalized the settlement after extensive and
11 difficult arms-length negotiations overseen by an experienced and highly-regarded mediator. The
12 Court conditionally certified the Class and preliminarily approved the settlement on July 31,
13 2025. Since then, the Court-approved notice form was mailed to the Class Members on August
14 14, 2025, and they reacted very favorably to the settlement. As of the filing of this motion, there
15 are no objections, and no class member has requested exclusion.

16 Class Counsel secured an excellent settlement with Defendant after some two-
17 plus years of investigation, litigation, and settlement negotiation and administration, all
18 without any compensation for services rendered or costs expended. The class notice duly
19 informed the class members that Class Counsel would request attorney’s fees not to
20 exceed 1/3 of the Gross Settlement Amount, along with reimbursement of no more than
21 \$20,000 for actual costs incurred litigating this matter. As of the filing of this motion, *not*
22 *one Class Member objected* to the proposed fee award. Consistent with the Settlement
23 and notice, Plaintiff now respectfully requests the Court award Class Counsel's fees in
24 the amount of \$91,500.00 and costs in the amount of \$20,000, as described in the
25 Declaration of Nikki Trenner (“Trenner Decl.”) filed herewith. The requested attorney’s
26 fees are well within the range of reasonableness, especially considering the complex and
27 risky nature of this litigation, the contingent risk assumed, the two-plus year delay in
28 payment and, when subjected to a lodestar crosscheck, results in a fee that is less than

1 the unadorned base lodestar.

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

5 **II. BACKGROUND/LITIGATION HISTORY**

6 Defendant is a television production company that produces television series for broadcast
7 on the NBCUniversal owned and other networks and streaming platforms. Plaintiff was employed
8 by Defendant as a non-exempt COVID Testing Coordinator/Consultant from September 13, 2021
9 to February 18, 2022. Plaintiff administered COVID-19 screening questionnaires and tests to
10 employees and visitors on the production of the show Loot – Season 1. (Trenner Decl., ¶ 2.)

11 On November 17, 2022, Plaintiff filed a class action complaint against Defendant. Plaintiff
12 then timely exhausted her administrative remedies with the LWDA by submitting her PAGA notice
13 on December 5, 2022. Plaintiff did not receive notice from the LWDA that it intended to investigate
14 the alleged violations outlined in his PAGA letter. Consequently, On February 10, 2023, Plaintiff
15 filed a PAGA lawsuit, also in Los Angeles County, alleging violation of the PAGA for the same
16 claims as the class action. On February 20, 2024, Plaintiff amended her class action lawsuit to
17 include her PAGA claim and dismissed the separately filed PAGA action. The operative FAC
18 alleges claims for minimum and overtime wages, meal and rest break violations, inaccurate wage
19 statements, waiting time penalties, unfair competition, and penalties under PAGA. (Trenner Decl.,
20 ¶ 3.)

21 The Parties subsequently agreed to private mediation and, in October 2024, the Parties
22 participated in mediation with Steve Mehta, Esq., a respected wage and hour class action mediator.
23 The mediation lasted a full day and, while the Parties did not settle at the mediation, they continued
24 to negotiate with the mediator's assistance and reached agreement on all major issues following a
25 mediator's proposal. (Trenner Decl., ¶¶ 4-5.) The Court preliminarily approved the settlement on
26 July 31, 2025.

27 Class Notices were mailed to class members on August 14, 2025, and Class Members
28 had until September 29, 2025 to opt out or object to the proposed settlement. (Declaration of

1 Madely Nava ("Nava Decl."), ¶¶ 7, 11-13.)

2 **III. TERMS OF THE PROPOSED SETTLEMENT**

3 Under the settlement, UTV will pay \$274,500.00 into a common fund, the Gross Settlement
4 Amount. Reasonable attorney's fees of up to \$91,500.00 (1/3 of the GSA), litigation costs of up to
5 \$20,000, an enhancement award to Plaintiff of \$7,500, settlement administration costs of \$5,800,
6 and \$10,000 for civil penalties under PAGA (of which 75%, or \$7,500, will go to the Labor &
7 Workforce Development Agency, and 25%, or \$2,500 will go to the Aggrieved Employees) all will
8 be paid from the Gross Settlement Amount. The remainder of approximately \$139,700 will be
9 allocated among the Participating Class Members based on their total weeks worked during the
10 Class Period. No portion of the Gross Settlement Amount will revert to UTV. (Trenner Decl., ¶ 6.)

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

12 The Court conditionally certified a settlement class including all non-exempt COVID
13 production safety term employees who worked for Defendant in California during the Class Period
14 of June 1, 2020 to May 31, 2023. The Settlement Administrator ultimately mailed class notices
15 to 177 individuals identified as members of the Class, and 2 additional individuals later were
16 determined to be class members as well. (Nava Decl., ¶¶ 7, 14.) Nothing has changed to
17 require reconsideration of the Court's certification of the Settlement Class.

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

19 This is a cash settlement that does not require Participating Class Members to submit a
20 claim form to receive their settlement share. Participating Class Members will receive their
21 settlement checks automatically via First Class U.S. Mail. Twenty percent of each settlement share
22 will be allocated to wages and the remaining eighty percent will be allocated to penalties and
23 interest. Qantas will pay any and all applicable employer-side payroll taxes separately and in
24 addition to the Gross Settlement Amount. Subject to the Court's approval, any amounts not claimed
25 (because a class member does not cash his or her settlement check) will be forwarded to the State
26 Controller's Unclaimed Property Fund. (Trenner Decl., ¶ 7.)

27 Each Participating Class Member will receive a share of the Net Settlement Amount based
28 on his or her total weeks worked for Qantas during the Class Period while employed in a non-

1 exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated
2 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium
3 wages for missed meal and rest breaks, and potential statutory penalties under applicable law. These
4 methods are intended to ensure each Class Member receives a portion of the available settlement
5 funds corresponding to the relative value of his or her potential claims. The proposed allocation
6 provides a reasonable way to compensate Class Members based on the amount of time they worked
7 for Qantas and the number of instances they allegedly missed a meal break and/or rest break,
8 allegedly were not provided compensation in lieu of such missed breaks, or allegedly lost pay due
9 to the alleged off the clock work. (Trenner Decl., ¶ 8.)

10 The average class settlement award will be approximately \$780, and class awards will range
11 from about \$27 to over \$3,600. The average PAGA award will be about \$20, and PAGA awards
12 will range from about \$1 to \$75. (Nava Decl., ¶¶ 16-19.)

13 **C. Settlement Administration**

14 Apex Class Action, LLC, as the Court-approved Settlement Administrator, mailed the
15 Notice Packet to the Class members after making all reasonable effort to ascertain the best
16 mailing address, including running each address through the National Change of Address
17 database and "skip-tracing" any Notice Packets returned as undeliverable. (Nava Decl., ¶¶ 3-
18 9.) The Class Notice, previously approved by the Court, duly informed Class Members of the
19 settlement terms, including the estimated relief each Class Member will receive, the amounts
20 to be requested for attorney's fees and the class representative enhancement awards, and the
21 right to opt out of or object to the settlement. (Nava Decl., ¶ 7; Exh. A.) Apex mailed 177
22 Notice Packets on August 14, 2025, and 2 additional individuals contacted Apex and after
23 investigation were determined to be class members as well. (Nava Decl., ¶¶ 7, 14.) Ultimately,
24 only 11 Notice Packets were deemed undeliverable, representing a 94% success rate. (Nava
25 Decl., ¶ 10.) The response window for opting out of or objecting to the settlement expired on
26 September 29, 2025. (Nava Decl., ¶¶ 11-12.) As of the filing of this motion, Apex has received
27 zero requests for exclusion (for a 100% participation rate), and zero objections to the
28 settlement. No disputes have been submitted regarding the information used to calculate

1 settlement shares. (Nava Decl., ¶¶ 11-13)

2 **D. Release of Claims**

3 All Participating Class Members will release UTV from all claims alleged in the operative
4 complaint, or that could have been brought based on the factual allegations in the operative
5 complaint during the Class Period. Plaintiff and the LWDA will release those PAGA claims alleged
6 in the PAGA notice to the extent alleged in the operative complaint. The Class and PAGA releases
7 are limited to the claims that were actually pleaded or could have been pleaded based on the alleged
8 facts in the operative complaint, and the PAGA notice for the PAGA claims. Only Plaintiff is
9 entering into a full general release of all claims and waiver of Civil Code section 1542. (Trenner
10 Decl., ¶ 9.)

11 **E. PAGA Penalties and Notice to the LWDA**

12 As noted, the Parties allocated \$10,000 from the GSA to resolution of Plaintiff's alleged
13 claims for PAGA civil penalties, and Plaintiff requests approval of the PAGA component
14 settlement under Labor Code section 2699, subd. (l). For the reasons addressed herein and at
15 preliminary approval, Plaintiff submits that amount and the proposed PAGA settlement is fair,
16 adequate and reasonable, and furthers PAGA's underlying purposes. *Moniz v. Adecco USA, Inc.*
17 (2021) 72 Cal.App.5th 56. As required by Labor Code section 2699(l)(2), Plaintiff gave notice of
18 the settlement and the final approval hearing to the LWDA via its online portal. (Trenner Decl., ¶
19 10; Exh. 1.)

20 **IV. ARGUMENT**

21 The law favors settlement, particularly in class actions where substantial resources
22 can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg &
23 A. Conte, 4 *Newberg on Class Actions* (4th ed. 2002), § 11.41; *Class Plaintiffs v. City of*
24 *Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276, *cert. denied*, 506 U.S. 953; *Van Bronkhorst v.*
25 *Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950; *Potter v. Pacific Coast Lumber Co.* (1951)
26 37 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not
27 unjustly compromised, the settlement of a class action requires court approval. Cal. Rule of
28 Court 3.769; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Wershba v. Apple*

1 *Computer* (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
2 against fraud or collusion, and to ensure fairness to absent class members. *Dunk*, 48
3 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, et seq. Review is accomplished through a
4 two-step process intended to determine whether, under the totality of circumstances, the
5 settlement is fair, reasonable and adequate. *Dunk*, 48 Cal.App.4th at 1801; *Wershba*, 91
6 Cal.App.4th at 245.

7 On a motion for final approval, the trial court is charged with determining whether, in
8 light of the total circumstances of the action and the response of the class members to the
9 proposed settlement, the settlement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at
10 1801-02; *Wershba*, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
11 determination and may consider a number of relevant factors, including: the strength of
12 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
13 further litigation; the amount offered in settlement; the extent of discovery and stage of the
14 proceedings; the experience and opinion of counsel; and the reaction of class members to the
15 settlement. *Id.* In light of the strong judicial policy favoring the settlement of class actions,
16 courts generally apply a presumption of fairness to a proposed class action settlement when:
17 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
18 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
19 similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802;
20 *Wershba*, 91 Cal.App.4th at 245.

21 The proposed settlement of this action warrants final approval under the standards
22 summarized above. The settlement is fair, reasonable and adequate, and represents a favorable
23 resolution of highly disputed claims. Further, the settlement was overwhelmingly approved
24 by the class members, as there were no objections and no class members opted out.

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

26 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
27 was reached following arm's-length negotiations presided over by Steve Mehta, Esq., a highly
28 respected and well-known mediator with extensive experience mediating wage and hour class

1 actions. (Trenner Decl., ¶ 5.) Moreover, Plaintiff and his counsel were well-informed about the
2 facts and the law, and counsel Zachary M. Crosner Jamie Serb, and Nikki Trenner have years of
3 litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-
4 qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter.
5 (Trenner Decl., ¶¶ 23-32.) Defendant likewise was represented by highly-qualified and
6 experienced defense counsel. Both sides advocated vigorously for their clients, and nothing
7 was "left on the table."

8 **B. The Class Reacted Favorably to the Settlement**

9 The settlement was well-received by the class. As of the filing of this motion, no
10 objections have been filed, and zero Class Members requested exclusion. (Nava Decl., ¶¶ 11-12.)
11 As many courts recognize, class member reaction to the settlement is one of the most important
12 factors to consider in determining if final approval should be granted. *Mandujano v. Basic*
13 *Vegetable Prods., Inc.*, 541 F.2d 832, 837 (9th Cir. 1976); *see also In re: American Bank Note*
14 *Holographics*, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled that the reaction of the
15 class to the settlement is perhaps the most significant factor to be weighed in considering its
16 adequacy") (internal quotation marks omitted).

17 **C. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's**
18 **Case and the Risks and Costs of Further Litigation**

19 Prior to mediation, the parties engaged in informal discovery to facilitate settlement
20 discussions. As a result, Plaintiff reviewed documents and information regarding Qantas's payroll
21 practices, a representative sampling of pay stubs and time records for about 25% of the class
22 members, applicable compensation plans, meal and rest break policies, etc., and information from
23 Defendant regarding class size and breakdown, number of work weeks/pay periods, average rates
24 of pay, and other information used to formulate a damages model. Plaintiff then had that
25 information reviewed with the assistance of a consulting expert. Plaintiff's counsel are confident
26 they obtained sufficient information to understand the law and facts of this case and make an
27 informed decision regarding the proposed settlement and whether it is fair and reasonable. (Trenner
28 Decl., ¶ 11.)

1 Next, the proposed settlement falls within the range of reasonableness warranting approval.
2 The proposed settlement involves a significant sum that, when distributed, will confer direct
3 monetary benefits on the class members. As described above, each class member will be entitled
4 to a monetary payment without having to file a claim and each payment will be relative to the value
5 of his or her potential claims. Through the information exchanged and analysis undertaken, Plaintiff
6 and counsel weighed the risks of continued litigation against the benefits of the proposed settlement
7 and determined settlement to be the most reasonable option in light of Defendant's procedural and
8 merits defenses, of which there were many.

9 First, Plaintiff contends Defendant failed to provide legally compliant meal and rest breaks.
10 Specifically, Plaintiff contends Defendant did not maintain a written meal/rest break policy, and
11 that due to the volume of work Defendant imposed and inadequate staffing made it difficult if not
12 impossible for the class members to take all required meal and breaks, and further made it difficult
13 to take breaks on a fully compliant basis even when they were able to take one at all. Per Plaintiff,
14 lunch breaks regularly were taken late, cut short or interrupted by work, or not provided at all.
15 Plaintiff claims this violates Labor Code sections 512, 226.7, and the applicable IWC Wage Order,
16 as well as *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 and *Augustus v.*
17 *ABM Security Serv., Inc.* (2016) 2 Cal.5th 257 for failure to provide compliant meal and rest periods
18 within the applicable time frames. (Trenner Decl., ¶ 12.)

19 Defendant denies Plaintiff's contentions, claiming they made meal and rest breaks available
20 to Class Members in compliance with California law. Defendant contend its meal and rest break
21 policies are lawful and that Class Members were provided with all required breaks. In particular,
22 Defendant argued that lunch was provided for employees while on the set, and that all worked
23 ceased while everyone ate lunch, which policy excused any need to record meal periods. Wage
24 Order 11, § 7(A)(3). Finally, Defendant argued that Plaintiff's meal and rest break claims are not
25 susceptible to common proof, as the claims would require individualized inquiry, including whether
26 there was an unlawful companywide policy, whether employees had the opportunity to take meal
27 and rest periods, whether they voluntarily chose to forego their meal and rest periods, and whether
28 Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant contend

1 these claims are vulnerable to a ruling that class treatment is not appropriate. Without taking into
2 consideration any of Defendant's defenses to certification or on the merits, Plaintiff calculated
3 Defendant's maximum exposure for the meal and rest break claims as approximately \$265,220 for
4 the meal break claims and about \$987,415 for the rest break claim. (Trenner Decl., ¶ 13.)

5 Plaintiff also asserts Defendant's failed to pay for all hours worked, and that Defendant
6 had a practice of paying Plaintiff and the Class Members according to their scheduled shifts rather
7 than actual hours worked. Per Plaintiff, supervisors would refuse to approve employee hours for
8 the pay period if they did not the exact times supervisors instructed them to record on their time
9 sheets. Plaintiff contends she and the Class Members were required to complete off-the-clock work
10 outside of their scheduled shifts including, but not limited to, completing paperwork, answering
11 questions for colleagues, and responding to calls and messages from supervisors, all of which
12 resulted in unpaid "off the clock" work. (Trenner Decl., ¶ 14.)

13 In response, Defendant argued its timekeeping and payroll policies accurately tracked and
14 paid for all hours worked by the class members, and that its policies strictly forbade any off the
15 clock work. Thus, per Defendant, if any off the clock work occurred it was done in violation of
16 company policy and without the company's knowledge or authorization. White v. Starbucks Corp.
17 (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge
18 of the off the clock work). For these reasons as well, UTV argued that class certification would be
19 impossible due to the individualized inquiries that would be needed to determine if off the clock
20 work occurred and the reasons therefor. Without considering any of Defendant's defenses to
21 certification or on the merits, Plaintiff's expert calculated Defendant's maximum exposure for this
22 claim as about \$107,450 on the off the clock claim. (Trenner Decl., ¶ 15.)

23 Plaintiff also contends Defendant required Plaintiff and the Class Members to use their
24 personal cell phones for work related purposes including communicating with supervisors before
25 and after their shifts. However, Defendant failed to fully reimburse employees for the use of their
26 personal cell phones *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, it was
27 held that § 2802 requires employers to always reimburse employees who are required to use
28 personal cell phones for work-related calls for a reasonable percentage of their cell phone bills.

1 Although Defendant paid \$3 per day to Plaintiff and the Class Members for a cell phone
2 reimbursement, Plaintiff contends this was not sufficient amount to reimburse employees for the
3 required use of personal cell phones while at work. Plaintiff further contended she was required to
4 work from home approximately 2 days per week but did not receive any reimbursement for home
5 internet, home telephone, etc. that was necessary for her to perform her duties. On the other hand,
6 Defendant argued its cell phone reimbursement policy was extremely generous and fully
7 compensated employees for all use of their personal devices. Defendant further argued that
8 working from home was voluntary and not a necessary part of the job, and therefore any use of
9 home internet, etc. was purely for personal convenience and not “necessary,” and therefore no
10 reimbursement was required. Without taking into consideration any of Defendant’s defenses to
11 certification or on the merits, Plaintiff calculated the maximum exposure for expense
12 reimbursement as about \$67,500. (Trenner Decl., ¶ 16.)

13 Plaintiff’s claims for inaccurate wage statements and waiting time penalties are derivative
14 of the unpaid wage claims. Should those claims fail, Plaintiff’s claim for inaccurate wage
15 statements and waiting time penalties would also fail. Defendant also contends it would not be
16 liable for waiting time penalties because a “good faith dispute” exists over the payment of past
17 wages. Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157,
18 1201. Further, Defendant contends Plaintiff would have to prove that it “willfully” failed to pay
19 Class Members appropriate wages due upon separation of employment, and that any failure to pay
20 wages upon separation was not willful. Without taking into consideration any of Defendant’s
21 defenses to certification or on the merits, Plaintiff calculated the exposure for wage statement
22 penalties as \$249,300 and waiting time penalties as \$1,261,700. (Trenner Decl., ¶ 17.)

23 As far as potential PAGA liability, the theoretical civil penalties likely exceed \$1.3 million
24 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections
25 at issue. (Trenner Decl., ¶ 18.) As with the class claims, Plaintiff discounted the potential PAGA
26 penalties based on Defendant’s various defenses on the merits and also accounted for the Court’s
27 wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code §
28 2699(e)(2); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (trial court awarded penalties

1 of \$5 per pay period after a bench trial, which decision was upheld on appeal); *In re Taco Bell*
2 *Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties
3 denied after trial). Accordingly, the Parties allocated \$10,000 to PAGA penalties.

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

16 Thus, Plaintiff and her counsel discounted the value of the class claims consistent with the
17 risks discussed above, as well as the potential applicability of arbitration agreements signed by
18 many class members. They carefully weighed the likelihood of the class receiving substantially
19 greater benefit if the litigation continued, and concluded – in light of these very real and substantial
20 risks – settlement on the proposed terms and without prolonged and costly litigation was in the best
21 interests of the class. The overall \$274,500 recovery represents a significant percentage of
22 Defendant's potential exposure and, given Defendant's multi-layered defenses and all other
23 potential risks of continued litigation, a total recovery for the class of \$274,500, which will result
24 in average award of some \$780 per class member, plus additional sums under PAGA, is a
25 significant result well within the range of reasonableness considering all potential outcomes, and it
26 will provide direct monetary awards to all Class Members without further delay. [Trenner Decl.,
27 ¶¶ 19-20.]

28 Importantly, the mere fact that a settlement does not provide the same recovery as might be

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

21 **V. PLAINTIFF’S ENHANCEMENT AWARD**

22 Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of \$7,500
23 for his service in bringing these claims on behalf of the Class. The request is reasonable given the
24 risks he undertook on behalf of the Class Members, and by contacting and retaining counsel to
25 pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members,
26 while shouldering the risk of being liable for Defendant’s litigation costs. Plaintiff also exposed
27 himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple
28 google search) for the benefit of other employees, placing himself at risk of discrimination by future

1 prospective employers. As set forth in more detail in his declaration filed at preliminary approval,
2 among taking many other actions assisting in the successful litigation of this case, Plaintiff provided
3 substantial factual information and documents to counsel, attended numerous meetings/phone
4 conferences with counsel to discuss the case, and kept abreast of all significant developments.
5 (Declaration of Portia Bartley, ¶¶ 2-9; Trenner Decl., ¶ 21.) Accordingly, the requested
6 enhancement payments to Plaintiff is appropriate and justified as part of the settlement. *Staton v.*
7 *Boeing* (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service
8 and incentive payments ranging from \$2,000 to \$25,000).

9 **VI. SETTLEMENT ADMINISTRATION COSTS**

10 The settlement provides for a payment to Apex for its services as the Settlement
11 Administrator. As set forth in the Declaration of Madely Nava, Apex has performed and will
12 continue to perform its required duties through final distribution of the settlement funds and
13 incurred \$5,800 in fees and expenses. (Nava Decl., ¶ 20.) Plaintiff accordingly requests the Court
14 approve payment of \$5,800 to Apex from the GSA. (Trenner Decl., ¶ 22.)

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

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

18 This Court has discretion over the amount of attorneys' fees awarded and court
19 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; *Levy v. Toyota*
20 *Motor Sales, U.S.A.* (1992) 4 Cal.App.4th 807, 813; *Lealao v. Beneficial Cal., Inc.* (2000) 82
21 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
22 marketplace for cases involving significant contingent risk, such as this one. *Deposit*
23 *Guaranty Nat'l Bank, Jackson, Miss. v. Roper* (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.
24 947; *Lealao*, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
25 private bargaining, if it were truly possible, might have reached" in determining a reasonable
26 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
27 litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and
28 justified by the work performed, the benefits obtained, and the contingent risk assumed.

1 As addressed in detail above, at the time the parties reached the tentative settlement
2 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
3 some or all the claims would not be certified for class treatment, as Defendant had strong
4 arguments that its compensation policies were legal and properly compensated the class
5 members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the
6 merits, it undoubtedly would have taken several years to realize any recovery while they
7 pursued class certification, trial, and an almost certain appeal. (Trenner Decl., ¶¶ 12-18.)

8 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to
9 obtain, and the settlement provides substantial cash payments to Class Members, with an
10 average award of \$780, and with a maximum award of over \$3,600. Importantly as well, the
11 Class Members have been overwhelmingly supportive of the Settlement, as there are no
12 objections and no opt outs to the settlement. (Nava Decl., ¶¶ 11-12.)

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

14 The United States Supreme Court has ruled the parties to a class action properly may
15 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
16 *Evans v. Jeff D.* (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In *Hensley v. Eckerhart* (1983)
17 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
18 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
19 should not result in a second major litigation. Ideally, of course, litigants will settle the
20 amount of a fee." The United States Supreme Court has reemphasized this policy and further
21 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
22 (1984) 465 U.S. 886, 902 n.19.

23 As part of the Settlement, Qantas agreed not to object to an award of no more than 1/3
24 of the GSA for attorney's fees, or \$91,500.00, and up to \$20,000 in reimbursement for
25 litigation costs and expenses. Such a fee is commensurate with what the market would
26 provide for similar services and the Court therefore can most certainly enforce the
27 agreement. As California's Court of Appeal has instructed:

28 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., ¶ 23.) 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

1 beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*,
2 557 F.2d at 769.

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

11 Here, Class Counsel seek a fee award for their successful prosecution and resolution
12 of this action of no more than 1/3 of the GSA, and specifically \$91,500.00. The percentage
13 requested is justified for the reasons set forth further below, and comports with fee awards
14 calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements
15 shows that courts have historically awarded fees in the range of 20 to 50 percent, depending
16 upon the circumstances of the case. *In re Warner Communications Sec. Litig.* (S.D.N.Y.
17 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases
18 range from 20 to 50 percent); Newberg, *Newberg on Class Actions* (3d ed.) § 14.03, pp. 13-
19 14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common
20 fund in order to assure that the fees do not consume a disproportionate part of the recovery
21 obtained for the class, although somewhat larger percentages are not unprecedented.").

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

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

28 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, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other employees of the Defendant; (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) working with a consulting expert on the analysis of Defendant’s production; (8) drafting a mediation brief and accompanying damages model after review and analysis of defendant’s formal and informal discovery production; (9) attending an all-day mediation with extensive follow up negotiations; (10) negotiating and drafting the settlement agreement and related documents; (11) drafting the motion for preliminary approval, and attending the hearing; (12) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (13) drafting the motion for final approval and 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. (Trenner Decl., ¶ 24, Exh. 2.) Additionally, Class Counsel will incur additional time following final approval to, inter alia, respond to class member inquiries, attend to distribution of settlement funds, and on the compliance hearing.

In pursuing this matter, Class Counsel incurred total attorney’s fees of \$____, and the lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a successful conclusion (____ 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. On a lodestar basis, the fee request of \$91,500 is actually less than the base lodestar, and accordingly there is no request for a lodestar enhancement.(Trenner Decl., ¶¶ 25-38.) Class Counsel submits that this supports the

1 reasonableness of the fee request since it shows the actually fees requested less than the
2 value of the work performed when evaluated via traditional hourly billing.

3 /////

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

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

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

20 **1. The Results Achieved.**

21 Class Counsel obtained an excellent result in this case for the Class Members. The
22 Settlement provides real monetary benefits to the Class Members, and the Settlement is
23 particularly advantageous to the Class Member because the proceeds will be distributed
24 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
25 Considering many individual claims would be very modest and would not be cost-effective
26 to pursue successfully, the Settlement provided them with fair compensation for their claims.
27 Moreover, the absence of any objection to either the Settlement or the attorney's fee request
28 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated
by the fact that not only one class member opted out. Additionally, the settlement amounts to

1 a substantial percentage of the maximum value of the amount the Class might have obtained
2 if it had tried the case and recovered on all theories seeking recovery of wages and penalties.
3 "It is well-settled law that a cash settlement amounting to only a fraction of the potential
4 recovery does not per se render the settlement inadequate or unfair." *In re Omnivision*
5 *Techs., Inc.* 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

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

7 At the time of filing the complaint, Class Counsel recognized that they would have to
8 expend a substantial amount of time and advance significant costs to prosecute a statewide
9 class action suit with no guarantee of compensation or reimbursement, in the hope of
10 prevailing against a sophisticated company represented by first-rate attorneys. Despite
11 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
12 of class certification and the ability to prove class-wide and individual damages. In light of
13 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant
14 would dig in and attempt to bury their small firm in work. Given the small size of Class
15 Counsel's firm, not receiving any compensation for several years while simultaneously
16 advancing litigation costs posed considerable risk and difficulty. (Trenner Decl., ¶¶ 39-40.)

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

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

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

27 There is a substantial difference between the risk assumed by attorneys being paid
28 by the hour and attorneys working on a contingent fee basis. The attorney being paid by

1 the hour can go to the bank with his fee. *Powers v. Eichen* (9th Cir. 2000) 229 F.3d
2 1249, 1256. The attorney working on a contingent basis can only log hours while
3 working without pay towards a result that will hopefully entitle him to a market fee
4 considering the risk and other factors of the undertaking. *Id.* at 1257. Otherwise, the
5 contingent fee attorney receives nothing. *Id.* In this case, Class Counsel subjected
6 themselves to this risk in this all or nothing contingent fee case wherein the necessity
7 and financial burden of private enforcement makes the requested award appropriate.

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

17 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
18 the investment of unnecessary time in a case, and the adverse resolution of any one of several
19 difficult issues present in this matter could have doomed the entire effort. As discussed, the
20 attorney's fees in this case were not only contingent but fairly risky, and there was always a
21 distinct possibility Plaintiff's counsel would receive nothing for any number of reasons.
22 (Trenner Decl., ¶¶ 39-40.) Accordingly, the contingent nature of the fee and the financial
23 burdens on Class Counsel also support the fee requested.

24 **5. Awards in Other Cases**

25 As discussed, the attorney's fees requested by Class Counsel are within the range of
26 fees awarded in comparable cases, as California courts regularly approve class action fee
27 awards amounting to 1/3 of a common fund, as approved by the California Supreme Court in
28 *Lafitte*. Additionally, review of class action settlements over the past 10 years shows that the

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

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

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

23 As explained in the Trenner Declaration, Class Counsel incurred a total of
24 \$21,702.24 in expenses incurred in connection with this litigation. These expenses
25 include the amounts paid for court filing fees, service of process, expert fees, postage,
26 Case Anywhere and mediation fees, all of which are costs normally billed to and paid by
27 the client. These costs were reasonably incurred in the prosecution of this matter, and
28 were necessary for the successful prosecution of the case and should be reimbursed up to

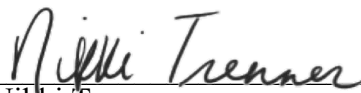
1 the \$20,000 cap imposed under the Settlement Agreement. (Trenner Decl., ¶¶ 41-42.)

2 **VIII. CONCLUSION**

3 For all the foregoing reasons, Plaintiff Portia Bartley respectfully requests that the Court
4 grant this motion and grant final approval of the proposed class action settlement and approve the
5 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of
6 the Settlement Administrator's fees and expenses, approve the requested class representative
7 enhancement payment, approve the award of attorney's fees and costs as requested, and enter
8 judgment in this action. Finally, Plaintiff request the Court set a non-appearance case review
9 regarding settlement compliance for January __, 2027, or a later date convenient for the Court.

10
11 Dated: December 10, 2025

CROSNER LEGAL, P.C.

12
13 
14 _____
15 Nikki Trenner
16 Zachary Crosner
17 Jamie Serb
18 Attorneys for Plaintiff PORTIA BARTLEY
19
20
21
22
23
24
25
26
27
28