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

JIHYUN KWON, as an individual on behalf of
herself and on behalf of all others similarly
situated,

Plaintiff,

v.

WOOLTARI USA, INC., a Delaware
corporation; and DOES 1-100, inclusive,

Defendants.

Case No. 22STCV37161

Assigned for All Purposes to:
Hon. Laura Seigle
Dept. SSC-17

MEMORANDUM OF POINTS &
AUTHORTIES ISO MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND REQUEST FOR
ATTORNEY'S FEES AND COSTS

[Filed concurrently with Notice of Motion
and Motion; Declarations of Nikki Trenner
and Nicole Bench; [Proposed] Order]

Date: January 3, 2025
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Dept.: SSC-17

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Jihyun Kwon seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 76
4 individuals who worked as non-exempt employees either directly or via a staffing agency for
5 Defendant Wooltari USA, Inc. (“Wooltari” or “Defendant”) at any location in California at any
6 time during the Class Period of November 23, 2018 to September 11, 2023.¹ The proposed
7 \$300,000 total settlement provides about \$161,301 in cash payments to the Class, with an
8 average award of about \$2,122, plus additional amounts payable under PAGA. The
9 remaining balance will cover settlement administration costs, civil penalties to the state, and
10 reasonable attorney’s fees and costs. The parties and their counsel finalized the settlement
11 after extensive and difficult arms-length negotiations overseen by an experienced and
12 highly-regarded mediator. The Court conditionally certified the Class and preliminarily
13 approved the settlement on June 7, 2024. Since then, the Court-approved notice form was
14 mailed to the class members on October 8, 2024, and they have reacted very favorably to
15 the settlement. As of the date of this motion, no class members opted out of the settlement,
16 and there are no objections.

17 Further, Class Counsel secured an excellent settlement with Defendant after some
18 two years of investigation, litigation, and settlement negotiation and administration, all
19 without any compensation for services rendered or costs expended. The class notice duly
20 informs the class members that Class Counsel would request attorney’s fees not to
21 exceed 33.33% of the Gross Settlement Amount, or \$100,000, along with reimbursement
22 of no more than \$15,000 for actual costs incurred litigating this matter. As of the filing
23 of this motion, *not one Class Member objected* to the proposed fee award. Consistent
24 with the Settlement and notice, Plaintiff now respectfully requests the Court award Class
25 Counsel’s fees in the amount of \$100,000 and costs in the amount of \$14,700.00, as
26 described in the Declaration of Nikki Trenner (“Trenner Decl.”) filed herewith. The

27 _____
28 ¹ The initial work week count triggered the Settlement Agreement’s escalator provision, and Wooltari elected to shorten the class/release period to bring the final number of work weeks within the allowable limit.

1 requested attorney's fees are well within the range of reasonableness, especially
2 considering the complex and risky nature of this litigation, the contingent risk assumed,
3 and the two-plus year delay in payment and, when subjected to a lodestar crosscheck,
4 result in fee request that is less than the unadorned lodestar.

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

8 **II. BACKGROUND/LITIGATION HISTORY**

9 Defendant Wooltari is a direct-to-consumer marketplace. Plaintiff Kwon worked for
10 Wooltari as a Design Team Leader, primarily creating banner ads and other advertising for
11 Wooltari's website. She worked for Defendant for approximately 1.5 years, from September 28,
12 2020, until Wooltari terminated her on April 18, 2022, allegedly in retaliation after she
13 complained about not receiving overtime pay and other wage and hour issues. At all times she
14 alleges she was treated as an "exempt" employee and received a base salary of \$52,800 per year
15 (\$2,000 per pay period) regardless of the number of hours she worked. (Trenner Decl., ¶ 2.)

16 On November 23, 2022, Plaintiff filed a class action complaint against Defendant in the
17 Los Angeles County Superior Court (Case No. 22STCV37161), alleging claims for unpaid
18 minimum and overtime wages, meal and rest break violations, wage statement violations, waiting
19 time penalties, failure to reimburse business expenses, and unfair competition. Plaintiff also
20 submitted the required notice letter the LWDA under PAGA and, after timely exhausted her
21 administrative remedies, on March 27, 2023 she filed a separate PAGA-only action in Los
22 Angeles County Superior Court (Case No. 23STCV06707) based on the same alleged Labor Code
23 violations. (Trenner Decl., ¶ 3.)

24 Once the matter was at issue, the Parties initiated discovery and later, after engaging in
25 meet and confer discussions regarding discovery, potential law and motion, and the merits of the
26 case, ultimately agreed to attempt mediation. They then engaged in significant informal
27 discovery to facilitate an exchange of information necessary to engage in a meaningful mediation.
28 In August 2023, the Parties participated in global mediation of both cases with the Steve Cerveris,

1 Esq., a respected wage and hour class action mediator and, after a full day of mediation and a
2 mediator's proposal, reached the proposed settlement. [Trenner Decl., ¶¶ 4-5.] This Court
3 preliminarily approved the settlement on June 7, 2024.

4 Class notices were mailed to class members on October 8, 2024, with a 45-day
5 window (to November 22, 2024) for class members to opt out of or object to the proposed
6 settlement. [Declaration of Nicole Branch ("Branch Decl."), ¶¶ 9, 13-15.]

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

8 **A. Deductions from the Settlement**

9 Under the settlement Defendant will pay \$300,000 into a common fund, the Gross
10 Settlement Amount (GSA"), in six equal installment payments over the course of six months
11 following final approval. Attorney's fees of up to \$100,000 (33.33% of the GSA), litigation costs
12 of up to \$15,000 (only \$14,700.00 is requested), settlement administration costs of \$3,999, and
13 \$20,000.00 for PAGA civil penalties (of which \$15,000 will go to the LWDA for the State's
14 share of civil penalties and \$5,000 will go to eligible Aggrieved Employees), all will be paid from
15 the GSA. The remainder of around \$161,301 will be allocated pro rata to the Class Members
16 based on their weeks worked during the Class Period. No portion of the GSA will revert to
17 Wooltari. [Trenner Decl., ¶ 6.]

18 **B. Certification of the Settlement Class**

19 The Court conditionally certified a settlement class defined to include all current and
20 former non-exempt employees that worked either directly or via a staffing agency for Wooltari at
21 any location in California at any time during the Class Period of November 23, 2018 to October
22 2, 2023. However, the initial work week count triggered the Settlement Agreement's escalator
23 provision (Settlement Agreement, § 8), and Wooltari elected to shorten the class/release period to
24 bring the final number of work weeks within the allowable limit, which resulted in a final end
25 date of September 11, 2023. [Bench Decl., ¶ 6.] The Settlement Administrator ultimately
26 mailed class notices to 76 individuals identified as members of the Class. [Bench Decl., ¶ 9.]
27 Nothing has changed to require reconsideration of the Court's certification of the
28 Settlement Class.

1 **C. The Benefit Conferred on the Settlement Class**

2 As noted, the settlement obligates Defendant to pay \$300,000 to resolve the Settlement
3 Class's claims, inclusive of attorney's fees and costs. At least \$161,301 from the GSA will be
4 distributed to the Participating Class Members. This is a cash settlement that does not require
5 Participating Class Members to submit a claim form to receive their settlement share.
6 Participating Class Members will receive their settlement checks automatically via First Class
7 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
8 eighty percent will be allocated to non-wage premiums, penalties, and interest, which allocation is
9 consistent with Wooltari's potential liability as discussed below. Wooltari will pay any and all
10 applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the
11 Court's approval, any amounts not claimed (because a class member does not cash their
12 settlement check) will be forwarded to the California State Controller's Unclaimed Property
13 Fund. [Trenner Decl., ¶ .]

14 Each Participating Class Member will receive a share of the Net Settlement Amount based
15 on his or her total weeks worked in California as a non-exempt employee during the Class Period.
16 Thus, each Class Member's Individual Settlement Payment will be calculated using criteria
17 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
18 missed meal and rest breaks, unreimbursed expenses, and potential statutory penalties under
19 applicable law. These methods are intended to ensure each Class Member receives a settlement
20 award corresponding to the relative value of their potential claims. The proposed allocation
21 provides a reasonable way to compensate Class Members based on the amount of time they
22 worked for Wooltari and the amount unpaid wages, etc. [Trenner Decl., ¶ 8.]

23 The average award to the Participating Class Members will be approximately \$2,122 with
24 a maximum award of over \$6,800, while the average PAGA award will be about \$66. [Bench
25 Decl., ¶¶ 17-18.]

26 **D. Settlement Administration**

27 ILYM Group, Inc., as the Court-approved Settlement Administrator, mailed the Notice
28 Packet to the Class members after making all reasonable effort to ascertain the best mailing

1 address, including running each address through the National Change of Address database
2 and "skip-tracing" any Notice Packets returned as undeliverable. [Bench Decl., ¶¶ 3-11.]
3 The Class Notice, previously approved by the Court, duly informed Class Members of the
4 settlement terms, including the estimated relief each Class Member will receive, the amounts
5 to be requested for attorney's fees and the class representative enhancement awards, and the
6 right to opt out of or object to the settlement. [Bench Decl., ¶ 9, Exh. A.] ILYM mailed 76
7 Notice Packets, in both English and Korean, on October 8, 2024. [Bench Decl., ¶ 9.] As of
8 the filing of this motion, three Notice Packets were deemed undeliverable, for a 96% success
9 rate. [Bench Decl., ¶ 12.] The response window for opting out, objecting to the settlement, or
10 submitting a dispute, expired on November 22, 2024. [Bench Decl., ¶¶ 13-15.] As of the
11 filing of this motion, ILYM has received zero requests for exclusion, zero objections to the
12 settlement, and no disputes have been submitted regarding the information used to calculate
13 class member settlement shares. [Bench Decl., ¶¶ 13-15.]

14 **E. Release of Claims**

15 All Participating Class Members will release Defendant from all claims alleged in the
16 operative complaint, or that could have been brought based on the factual allegations in the
17 operative complaint during the Class Period, including all PAGA claims. The release is limited to
18 the claims that were actually pleaded or could have been pleaded based on the alleged facts in the
19 operative complaint. [Trenner Decl., ¶ 9.]

20 **F. PAGA and Notice to the LWDA**

21 As noted, the Parties allocated \$20,000 from the GSA to resolution of Plaintiff's claims
22 under PAGA, and respectfully request that the Court approve that amount as fair, reasonable and
23 adequate, and consistent with PAGA's underlying purposes. Under PAGA, \$15,000 of this
24 amount will be paid to the LWDA as the state's share of the civil penalties, and the remainder
25 of \$5,000 will be distributed to the Aggrieved Employees. As required by Labor Code section
26 2699(l)(2), Plaintiff notified the LWDA of the settlement and the final approval hearing via its
27 online portal. [Trenner Decl., ¶ 10; Exh. 1.]
28

1 **IV. ARGUMENT**

2 **A. Standards For Approval**

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

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

1 experienced in similar litigation; and (4) the percentage of objectors is small. Dunk, 48
2 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

3 **B. The Proposed Settlement Merits Final Approval**

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

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

11 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
12 was reached following arm's-length negotiations presided over by Steve Cerveris, Esq., a
13 highly respected and well-known mediator with extensive experience mediating wage and
14 hour class actions. [Trenner Decl., ¶ 5.] Moreover, Plaintiff and her counsel were well-
15 informed about the facts and the law, and counsel Zachary M. Crosner, Jamie K. Serb, and
16 Nikki Trenner have years of litigation experience, including litigating wage and hour class
17 actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing
18 further litigation or settling the matter. [Trenner Decl., ¶¶ 25-29, 32.] Defendant likewise was
19 represented by highly-qualified and experienced defense counsel. Both sides advocated
20 vigorously for their clients and nothing was "left on the table."

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

22 The settlement was well-received by the class. As of the filing of this motion, no
23 objections have been filed, and no Class Members have requested exclusion out of 76 settlement
24 class members. [Bench Decl., ¶¶ 13-14.] As many courts recognize, class member reaction to the
25 settlement is one of the most important factors to consider in determining if final approval should
26 be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see
27 also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is
28 well-settled that the reaction of the class to the settlement is perhaps the most significant factor to

1 be weighed in considering its adequacy”) (internal quotation marks omitted).

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

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

11 Prior to settlement, the parties engaged in formal and informal discovery to facilitate
12 settlement discussions. Thus, Plaintiff reviewed documents and information regarding Wooltari’s
13 payroll practices, a random sampling of pay stubs and time records from class members,
14 applicable compensation plans, meal and rest break policies, etc., and information from
15 Defendant regarding class size and breakdown, work weeks/pay periods, rates of pay, and other
16 information used to formulate a damages model. Plaintiff then had that information analyzed by a
17 consulting expert to assist in determining potential violation rates and other data used to
18 formulate a damages model. Plaintiff’s counsel are confident they obtained sufficient information
19 to understand the law and facts of this case and make an informed decision regarding the
20 proposed settlement and whether it is fair and reasonable. [Trenner Decl., ¶¶ 4, 11.]

21 First, Plaintiff contends Wooltari wrongfully classified the class members as “exempt”
22 employees and accordingly paid them a base salary regardless of the number of hours worked. In
23 order to qualify as administratively exempt,² however an employee must be primarily engaged in
24 duties that meet the test of the exemption, customarily and regularly exercise discretion and
25 independent judgment in performing his or her duties, and earn a monthly salary equivalent to no
26 less than two times the state minimum wage. E.g., Wage Order 7-2001, §§ 1(A)(2)(a)-(g). Here,
27 Plaintiff contends Defendant failed to pay class members on the required salary basis; for

28 ² Wooltari appears to be relying on the administrative exemption, Wage Order 7-2001, § 1(A)(2).

1 example, Plaintiff's salary of \$4,400/month was less than the \$4,853.33 per month needed to
2 meet the exemption in 2021 when the state minimum wage as \$14/hour. Furthermore, Plaintiff
3 contends the duties and responsibilities of the class members' job positions did not involve
4 management of the business and they didn't exercise any discretion/independent judgment such
5 that they met the requirements of the administrative exemption. Accordingly, Plaintiff argues the
6 class was misclassified and entitled to receive overtime wages and all required meal and rest
7 breaks. (Trenner Decl., ¶ 12.)

8 Defendant denies Plaintiff's contentions, claiming its compensation policies properly paid
9 Plaintiff and the class members for all hours worked, noting there is nothing improper about
10 paying non-exempt employees a "salary" for 40 hours of work per week, and that its records
11 show Plaintiff and the class members rarely worked more than 40 hours per week and that it paid
12 for documented overtime. Wooltari also argued it made meal and rest breaks available to Class
13 Members in compliance with California law and that its meal and rest break policies are lawful
14 and that Class Members were frequently reminded they were required to take all meal and rest
15 breaks. Defendant also contends its meal and rest break policies and practices comported with the
16 flexibility the *Brinker* court held was integral to California's meal and rest period requirements.
17 Finally, Defendant argues that Plaintiff's meal and rest break claims are not susceptible to
18 common proof, as the claims would require individualized inquiry, including whether there was
19 an unlawful companywide policy, whether employees had the opportunity to take meal and rest
20 periods, whether they voluntarily chose to forego their meal and rest periods, and whether
21 Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant
22 contends class treatment is not appropriate. (Trenner Decl., ¶ 13.)

23 Without taking into consideration any of Defendant's defenses to certification or on the
24 merits, Plaintiff estimates Wooltari faces around **\$1,432,000** in damages for unpaid overtime,
25 around **\$919,670** for meal period violations assuming a 100% violation rate, and around **\$919,670**
26 in damages on the rest period claims, again assuming a 100% violation rate. (Trenner Decl.,
27 ¶ 14.)

28 On the inaccurate wage statement claims under Labor Code section 226, Plaintiff contends

1 Wooltari's wage statements violate Section 226 on their face by failing to correctly state the total
2 hours worked during each pay period and by failing to state the applicable hourly rates in effect
3 during each pay period. Plaintiff further alleges derivative violations, and contends that if she
4 prevails on her primary unpaid wage claims then the wage statements would be further
5 inaccurate. Plaintiff estimates Wooltari faces over **\$173,800** in wage statement penalties under
6 Labor Code 226. (Trenner Decl., ¶ 15.)

7 As a result of the above alleged violations, Plaintiff also derivatively alleges Wooltari
8 failed to timely pay all wages that were due and owing upon separation of employment. Thus,
9 should the primary claims for unpaid wages fail, the waiting time penalty claims would also fail.
10 Defendant further contends it would not be liable for waiting time penalties because a "good faith
11 dispute" exists over the payment of past wages. *Amaral v. Cintas Corp. No. 2* (2008) 163
12 Cal.App.4th 1157, 1201. Further, Defendant contends Plaintiff would have to prove Defendant
13 "willfully" failed to pay Class Members appropriate wages due upon separation of employment.
14 (Trenner Decl., ¶ 46.) Without taking into consideration any of Defendant's defenses to
15 certification or on the merits, Plaintiff calculated Defendant's maximum exposure for waiting
16 time penalties at about **\$141,000** based on 25 former employees during the limitations period.
17 (Trenner Decl., ¶ 16.)

18 For the expense reimbursement claims, Plaintiff argues Wooltari requires Class Members
19 to use their personal cell phones to communicate with supervisors and coworkers regarding their
20 work without reimbursement. In response, Wooltari contends there was no need to use a personal
21 cell phone in the performance of Class Member job duties, and if anyone did so it was purely for
22 personal convenience and not a job requirement and therefore no reimbursement was required.
23 Without accounting for any potential defenses, Plaintiff estimates she and the Class Members are
24 entitled to about **\$40,000** in expense reimbursement. (Trenner Decl., ¶ 17.)

25 As far as potential PAGA liability, the theoretical civil penalties likely are around \$2.5
26 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code
27 sections at issue. (Trenner Decl., ¶ 18.) As with the class claims, Plaintiff discounted the
28 potential PAGA penalties based on Defendant's various defenses on the merits and also

1 accounted for the Court's wide discretion to reduce such penalties, or to decline to award
2 penalties at all. Labor Code § 2699(e)(2); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th
3 504 (trial court awarded penalties of \$5 per pay period after a bench trial, which decision was
4 upheld on appeal); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) 2016 U.S.
5 Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated
6 \$20,000 to PAGA penalties. (Agreement, § 3.2.4.)

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

19 Thus, Plaintiff and her counsel discounted the value of the class claims consistent with the
20 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
21 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
22 real and substantial risks – settlement on the proposed terms and without prolonged and costly
23 litigation was in the best interests of the class. The overall \$300,000 recovery represents a
24 significant percentage of Defendant's potential exposure. Given Defendant's multi-layered
25 defenses and all other potential risks of continued litigation, a total recovery for the class of
26 \$300,000, which will result in average award of about \$2,122 per class member, plus additional
27 sums under PAGA, is a significant result well within the range of reasonableness considering all
28 potential outcomes, and it will provide direct monetary awards to all Class Members without

1 further delay. [Trenner Decl., ¶¶ 19-21.]

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

23 **IV. SETTLEMENT ADMINISTRATION COSTS**

24 The settlement provides for a payment to ILYM from the GSA for its services as the
25 Settlement Administrator. As set forth in the Declaration of Nicole Bench, ILYM has performed
26 and will continue to perform its required duties through final distribution of the settlement funds,
27 and incurred \$3,999.00 in fees and expenses. [Bench Decl., ¶ 19.] Accordingly, Plaintiff
28 respectfully requests the Court approve payment of \$3,999 to ILYM from the GSA. [Trenner

Decl., ¶ 22.]

V. 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 Wooltari 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., ¶¶ 12-18.]

Nonetheless, Plaintiff succeeded and expeditiously obtained the relief she set out to obtain, and the settlement provides substantial cash payments to Class Members, with an average award of about \$2,122, and with a maximum award of over \$6,800. 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 zero individuals have opted out. [Bench Decl., ¶¶ 13-14.]

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

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

11 As part of the Settlement, Defendant agreed not to object to an award of no more than
12 33.33% of the GSA for attorney's fees, or \$100,000, and up to \$15,000 in reimbursement for
13 litigation costs and expenses (only \$14,700.00 is requested). Such a fee is commensurate
14 with what the market would provide for similar services and the Court therefore can most
15 certainly enforce the agreement. As California's Court of Appeal has instructed:

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

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

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

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

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

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

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

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

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

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

28 Here, Class Counsel seek a fee award for their successful prosecution and resolution
of this action of no more than 33.33% of the total amount recovered by the Class via the
lawsuit, or \$100,000. The percentage requested is justified for the reasons set forth further

below, and comports 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. 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.").

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

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." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 174.8 hours of time on this matter, resulting in a modest and very reasonable lodestar of \$128,320.

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 Wooltari employees; (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) drafting a first amended complaint; (6) propounding initial written discovery, (7) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (8) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (9) drafting a mediation brief and accompanying damages model after review and analysis of Defendant's informal discovery production; (10) attending an all-day mediation; (11) negotiating and drafting the settlement agreement and related documents; (12)

1 drafting an amended complaint to effectuate the settlement; (13) drafting the motion for
2 preliminary approval, and attending the hearing; (14) administration of the settlement, including
3 communications with the Settlement Administrator and settlement class members; (15) drafting
4 the motion for final approval and motion for attorney's fees, and attending the final approval
5 hearing; and (16) extensive communications with the Plaintiff regarding case status, case
6 investigation and document review, mediation, and settlement terms. Additionally, Class Counsel
7 will incur additional time following final approval to, inter alia, respond to class member
8 inquiries, work with the Settlement Administrator on the distribution of settlement funds, and on
9 the compliance hearing. [Trenner Decl., ¶ 24, Exh. 2.]

10 In pursuing this matter, Class Counsel incurred total attorney's fees of \$128,320,
11 based on 174.8 attorney hours. The lodestar is based on an eminently reasonable number of
12 hours worked to litigate this matter to a successful conclusion, and the requested attorney hourly
13 rates are reasonable and comport with hourly rates charged by other attorneys with similar
14 experience in this practice area in California. [Trenner Decl., ¶¶ 25-36.] On a lodestar basis, the
15 fee request of \$100,000 results in a base lodestar that is larger than the actual fee request on
16 a percentage of the recovery basis and accordingly there is no request for a lodestar
17 enhancement. [Trenner Decl., ¶¶ 36-37.] Class Counsel submits this fact effectively operates
18 to show that the percentage fee request is reasonable considering it less than the actual value
19 of the services rendered when valued via traditional hourly billing.

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

23 What has now emerged in most fee award decisions is the recognition that fee
24 determinations in both common fund and statutory fee situations are incapable of
25 mathematical precision because of the intangible factors that must be resolved in the court's
26 discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In
27 determining an appropriate fee in a common fund case, a Court must decide, based on the
28 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.

1 Paul, Johnson, Alston & Hunt v. Graulty (9th Cir. 1989 886 F.2d 268, 272) (the benchmark
2 percentage fee may be adjusted to account for the circumstances involved in a case).

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

7 **1. The Results Achieved.**

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

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

23 At the time of filing the complaint, Class Counsel recognized that they would have to
24 expend a substantial amount of time and advance significant costs to prosecute a statewide
25 class action suit with no guarantee of compensation or reimbursement, in the hope of
26 prevailing against a sophisticated company represented by first-rate attorneys. Despite
27 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
28

1 of class certification and the ability to prove class-wide and individual damages. In light of
2 the highly uncertain nature of this suit, Class Counsel also bore the risk that Wooltari would
3 dig in and attempt to bury their small firms in work. Given the small size of Class Counsel's
4 firm, not receiving any compensation for several years while simultaneously advancing
5 litigation costs posed considerable risk and difficulty. [Trenner Decl., ¶¶ 38-39.]

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

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

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

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

25 Counsel retained on a contingency fee basis, whether in private matters or in class
26 action litigation, is entitled to a premium beyond their standard, hourly, non-contingent
27 fee schedule to compensate for both the contingent risk assumed and the delay in
28 payment. The simple fact is that despite the most vigorous and competent of efforts,

1 success is never guaranteed. McKittrick v. Gardner (4th Cir. 1967) 378 F.2d 872, 875.
2 Indeed, if counsel is not adequately compensated for the risks inherent in difficult class
3 actions, competent attorneys will be discouraged from prosecuting similar cases.
4 Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132-33; Cazares v. Saenz (1989) 208
5 Cal.App.3d 279, 287.

6 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
7 the investment of unnecessary time in a case, and the adverse resolution of any one of several
8 difficult issues present in this matter could have doomed the entire effort. As discussed, the
9 attorney's fees in this case were not only contingent but fairly risky, and there was always a
10 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.
11 [Trenner Decl., ¶¶ 38-39.] Accordingly, the contingent nature of the fee and the financial
12 burdens on Class Counsel and Plaintiff also support the fee requested.

13 **5. Awards in Other Cases**

14 As discussed, the attorney's fees requested by Class Counsel are within the range of
15 fees awarded in comparable cases, as cross-checked against the lodestar method in light of
16 the contingent risk assumed, the delay in payment, the result achieved, and the overall
17 quality of the representation.

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

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

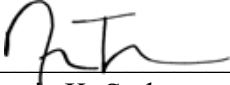
1 As explained in the Trenner Declaration, Class Counsel incurred a total of
2 \$14,700.00 in expenses incurred in connection with this litigation. These expenses
3 include the amounts paid for court filing fees, Case Anywhere charges, service of
4 process, expert fees, postage, and mediation fees, all of which are costs normally billed
5 to and paid by the client. These costs were reasonably incurred in the prosecution of this
6 matter and it is respectfully requested that the Court authorized they be reimbursed in
7 full. [Trenner Decl., ¶¶ 40-41.]

8 **VI. CONCLUSION**

9 For all the foregoing reasons, Plaintiff Jihyun Kwon respectfully requests that the Court
10 grant this motion and grant final approval of the proposed class action settlement and approve the
11 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of
12 the Settlement Administrator's fees and expenses, approve the award of attorney's fees and costs
13 as requested, and enter judgment in this action. Finally, Plaintiff requests the Court set a non-
14 appearance case review regarding settlement compliance for January 9, 2026, or a later date
15 convenient for the Court.

16 Dated: December 9, 2024

CROSNER LEGAL, P.C.

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