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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF RIVERSIDE**

10
11 SHAWN VASQUEZ, as an individual on
behalf of himself and on behalf of all others
12 similarly situated,

13 Plaintiff,

14 vs.

15 SUPER T TRANSPORT, INC., an Idaho
corporation; and DOES 1-100, inclusive,

16 Defendants.

) Case No. CVRI2300957

) Assigned for All Purposes To:

) Judge: Harold W. Hopp

) Dept: 1

) **MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

17 **Date: January 30, 2026**

18 **Time: 8:30 a.m.**

19 **Dept. 1**
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1 **I. INTRODUCTION**

2 Plaintiff Shawn Vasquez seeks final approval of a non-reversionary class action settlement
3 resolving wage and hour claims on behalf of 150 individuals who worked as current and former truck
4 drivers who primarily worked for Defendant (“Super T” or “Defendant”) in California at any time
5 during the Class Period of February 24, 2019 through April 8, 2025 (the date of preliminary approval.
6 The proposed \$108,791 total settlement provides about \$41,154 in cash payments to the Class, with
7 an average award of about \$32.18 per work week, plus additional amounts payable under PAGA.
8 The remaining balance will cover a modest service award to Plaintiff, settlement administration costs,
9 civil penalties to the state, and reasonable attorney’s fees and costs. The parties and their counsel
10 finalized the settlement after extensive and difficult arms-length negotiations overseen by an
11 experienced and highly-regarded mediator. The Court conditionally certified the Class and
12 preliminarily approved the settlement on April 8, 2025. Since then, the Court-approved notice form
13 was mailed to the Class Members on November 18, 2025, and they reacted very favorably to the
14 settlement. As of the filing of this motion, there are no objections nor exclusions.

15 Class Counsel secured an excellent settlement with Defendant after some two years
16 of investigation, litigation, and settlement negotiation and administration, all without any
17 compensation for services rendered or costs expended. The class notice duly informed the
18 class members that Class Counsel would request attorney’s fees not to exceed 1/3 of the
19 Gross Settlement Amount, along with reimbursement of no more than \$12,500 for actual
20 costs incurred litigating this matter. As of the filing of this motion, *not one Class Member*
21 *objected* to the proposed fee award. Consistent with the Settlement and notice, Plaintiff
22 now respectfully requests the Court award Class Counsel's fees in the amount of
23 \$36,263.67 and costs in the amount of \$10,873.46, as described in the Declaration of
24 Brandon Brouillette (“Brouillette Decl.”) filed herewith. The requested attorney’s fees are
25 well within the range of reasonableness, especially considering the complex and risky
26 nature of this litigation, the contingent risk assumed, the two-plus year delay in payment
27 and, when subjected to a lodestar crosscheck, results in fee request smaller than the base
28 lodestar.

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

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

5 Super T provides refrigerated and dry freight transportation services throughout the United
6 States, including various cities throughout California, including Irvine, Laverne, La Mirada, Carson,
7 Van Nuys, Vernon, Oxnard, and Riverside. Plaintiff was employed by Super T as an inter-state
8 commercial truck driver from June 2022 to around January 2023. [Brouillette Dec., ¶ 2.]

9 Plaintiff alleges Super T violated California wage and hour law in several respects. First, he
10 alleges he and the class were compensated via a system that included per diem mileage and various
11 amounts for non-driving hours worked, which system failed to pay all minimum wages due by failing
12 to pay employees for all time spent performing non-driving activities, including pre- and post-trip
13 inspections, loading and unloading (and waiting for loading/unloading), fueling, and washing the
14 truck (twice monthly). However, the flat rates provided for non-driving time failed to capture all non-
15 driving activities and, even as to those limited non-driving activities listed, failed to ensure Plaintiff
16 was paid minimum wages for all hours worked. He further alleges meal periods were "on duty"
17 because employees, due to scheduling constraints, were unable to take a meal break except when the
18 vehicle was being loaded/unloaded; however, since employees were not allowed leave their vehicles
19 while the vehicle was being loaded or unloaded, the meal periods were not duty-free and should have
20 been compensated. He further claims he had to use his personal cell phone for business purposes
21 without reimbursement, and that the wage statements violated Labor Code section 226.2 on their
22 face. [Brouillette Decl., ¶ 3.]

23 Based on these allegations, on February 24, 2022, Plaintiff filed the underlying class action
24 complaint on behalf of himself and the Class Members, asserting claims for (1) failure to pay
25 minimum wages; (2) failure to provide itemized wage statements; (3) failure to reimburse business
26 expenses, (4) failure to pay all wages due at termination; and (5) unfair competition. After exhausting
27 administrative remedies, in September 2023 Plaintiff filed a First Amended Complaint adding claims
28 under PAGA based on the same alleged Labor Code violations plus additional Labor Code violations.

1 [Brouillette Decl., ¶ 4.] In February 2025, pursuant to the Parties' Settlement Agreement, Plaintiff
2 filed a Second Amended Complaint primarily to add putative class claims based on allegations and
3 theories that were part of Plaintiff's PAGA claim (but were not originally pled as putative class
4 claims). The Second Amended Complaint is the operative complaint in this action.

5 Super T has at all times denied Plaintiff's allegations and maintained its timekeeping and
6 payroll policies accurately track and pay for all hours worked by its employees and at the correct
7 rates of pay, and that it paid the class members appropriately for all hours worked while in California.
8 It also strongly contends the case cannot be maintained as any kind of class or representative action,
9 arguing for example that whether California law was applicable to its inter-state truck drivers depends
10 in part on how much time they spent driving and performing other tasks in California, which would
11 be based on individual inquiries, and therefore individualized issues predominate and trial on a
12 representative basis would be unmanageable. [Brouillette Decl., ¶ 5.]

13 After Plaintiff filed the initial complaint, the Parties initiated discovery and also engaged in
14 numerous meet and confer discussions regarding discovery, potential law and motion, and potential
15 ADR. Ultimately, the Parties agreed to mediation and also agreed to an informal exchange of
16 information to facilitate meaningful settlement discussions. The Parties then retained Scott Markus,
17 Esq., a respected neutral with experience mediating wage and hour class actions. In November
18 2023, the Parties participated in a mediation with Mr. Markus that ultimately resulted in this
19 settlement. [Brouillette Decl., ¶¶ 6-7.]

20 The Court preliminarily approved the settlement on April 8, 2025. Class Notices were
21 mailed to class members on November 18, 2025, with a forty-five day window (to January 2,
22 2026) for class members to opt out or object to the proposed settlement. [Declaration of Karla
23 Nava ("Nava Decl."), ¶¶ 7, 11-13.]

24 **III. THE PROPOSED SETTLEMENT TERMS**

25 Under the settlement, Super T will pay \$108,791.00 into a common fund, the Gross
26 Settlement Amount. Reasonable attorney's fees of up to \$36,263.67 (33 1/3% of the GSA), litigation
27 costs of up to \$12,500, an enhancement award to Plaintiff of up to \$10,000, settlement administration
28 costs of no more than \$4,215, and \$5,000 for civil penalties under PAGA (of which 75%, or \$3,750,

1 will go to the Labor & Workforce Development Agency, and 25%, or \$1,250 will go to the Aggrieved
2 Employees) all will be paid from the Gross Settlement Amount. The remainder of approximately
3 \$42,403 will be allocated among the Participating Class Members based on their total weeks
4 primarily spent working in California during the Class Period. No portion of the Gross Settlement
5 Amount will revert to Super T. [Brouillette Decl., ¶ 8.]

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

7 The Court conditionally certified a settlement class including all current and former truck
8 drivers who primarily worked for Super T in California at any time during the Class Period of
9 February 24, 2019 through April 8, 2025 (the date of preliminary approval). The Settlement
10 Administrator ultimately mailed class notices to 150 individuals. [Nava Decl., ¶ 7.] Thus, the final
11 Settlement Class increased over the amount of putative class members reported at preliminary
12 approval given substantial hiring undertaken by Super T between the mediation and grant of
13 preliminary approval.¹ While the number of individuals increased, the vast majority of them worked
14 only a few weeks within the Class Period – over 80% worked 9 weeks or less within the class period.
15 Accordingly, the individuals employed prior to mediation and during the majority of class period
16 will receive the vast bulk of the settlement proceeds as intended. Plaintiff submits there is no reason
17 to revisit the certification decision. [Brouillette Decl., ¶ 9.]

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 claim
20 form to receive their settlement share. Participating Class Members will receive their settlement
21 checks automatically via First Class U.S. Mail. Twenty-five percent of each settlement share will be
22 allocated to wages and the remaining seventy-five percent will be allocated to expenses
23 reimbursement, penalties and interest. Super T will pay any and all applicable employer-side payroll
24 taxes separately and in addition to the Gross Settlement Amount. Subject to the Court's approval,
25 any amounts not claimed (because a class member does not cash their check) will be redistributed to
26

27 ¹ The Parties previously brought this to the Court's attention in a Stipulation and Order, filed
28 October 29, 2025, that increased the amount of administration fees and rescheduled the Final
Approval Hearing.

1 those Participating Class Members who cashed their checks. [Brouillette Decl., ¶ 10.]

2 Each Participating Class Member will receive a share of the Net Settlement Amount based
3 on the number of qualifying workweeks he or she primarily worked in California as a truck driver
4 for Super T during the Class Period. Thus, each Class Member's Individual Settlement Payment will
5 be calculated using criteria typically used in determining appropriate amounts due to settlement class
6 members for alleged wage and hour violations, including unpaid wages, unpaid premium wages for
7 missed meal and rest breaks, unreimbursed business-related expense and potential statutory penalties
8 under applicable law. These methods are intended to ensure each Class Member receives a portion
9 of the available settlement funds corresponding to the relative value of his or her potential claims.
10 The proposed allocation provides a reasonable way to compensate Class Members based on the
11 amount of time they primarily worked for Super T in California and were subject to potential alleged
12 wage and hour violations. [Brouillette Decl., ¶ 11.]

13 The average class settlement award, based on \$32.18 per work week, will be approximately
14 \$274, and that the class awards will range from about \$32.18 on the low end (for Class Members
15 with one work week) to about \$3,796 on the high end. The estimated average PAGA award will be
16 about \$8.62, and estimated PAGA awards will range from about \$1.26 to \$49.29. [Decl., ¶¶ 16-18.]

17 **C. Settlement Administration**

18 Apex Class Action, as the Court-approved Settlement Administrator, mailed the Notice
19 Packet to the Class members after making all reasonable effort to ascertain the best mailing
20 address, including running each address through the National Change of Address database and
21 "skip-tracing" any Notice Packets returned as undeliverable. [Nava Decl., ¶¶ 3-10.] The Class
22 Notice, previously approved by the Court, duly informed Class Members of the settlement terms,
23 including the estimated relief each Class Member will receive, the amounts to be requested for
24 attorney's fees and the class representative enhancement awards, and the right to opt out of or
25 object to the settlement. [Nava Decl., ¶; Exh. A.] Apex mailed 150 Notice Packets on November
26 18, 2025. [Nava Decl., ¶ 7.] Ultimately, only one Notice Packet was deemed undeliverable,
27 representing a 99% success rate. [Nava Decl., ¶ 10.] The response window for opting out of or
28 objecting to the settlement expired on January 2, 2026. [Nava Decl., ¶¶ 11-13.] Apex has

received no requests for exclusion (for a 100% participation rate), and zero objections to the settlement. No disputes were submitted regarding the information used to calculate class member settlement shares. [Nava Decl., ¶¶ 11-13.]

D. Release of Claims

All Participating Class Members will release Super T from all claims alleged in the operative SAC, or that could have been brought based on the factual allegations and theories in the SAC during the Class Period. Plaintiffs and the LWDA will release those PAGA claims alleged in the PAGA notice and to the extent alleged in the SAC. The Class and PAGA releases are limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts and theories in the SAC, and PAGA notice for the PAGA claims. Only Plaintiff will provide a full general release of all claims. [Brouillette Decl., ¶ 12.]

E. PAGA Penalties and Notice to the LWDA

As noted, the Parties allocated \$5,000 to payment of alleged civil penalties under PAGA, and submit that amount is fair, reasonable and adequate, and consistent with PAGA's underlying purposes. As required by Labor Code section 2699(l)(2), Plaintiff gave notice of the settlement and the approval hearing to the LWDA via its online portal. [Brouillette Decl., ¶ 13; Exh. 1.]

IV. ARGUMENT

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

whether, under the totality of circumstances, the settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91 Cal.App.4th at 245.

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

A. The Proposed Settlement Merits Final Approval

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

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

The settlement is not the result of fraud or collusion. Rather, the proposed settlement was reached following arm's-length negotiations presided over by Scott Markus, Esq., a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Brouillette Decl., ¶ 7.] Moreover, Plaintiff and her counsel were well-informed about the facts and the law, and counsel Zachary M. Crosner and Brandon Brouillette have years of

1 litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-
2 qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter.
3 [Brouillette Decl., ¶¶ 27-39.] Defendant likewise was represented by highly-qualified and
4 experienced defense counsel. Both sides advocated vigorously for their clients, and nothing was
5 "left on the table."

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

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

15 B. **The Proposed Settlement Meets the Kullar Factors and is within the Range of** 16 **Reasonableness**

17 Prior to mediation, the parties engaged in both formal and informal discovery to facilitate
18 settlement discussions. As a result, Plaintiff reviewed documents and information regarding Super
19 T's payroll practices, a representative sampling of pay stubs and time records for about 25% of the
20 class members, applicable compensation plans, etc., and information from Defendant regarding class
21 size and breakdown, number of work weeks/pay periods, average rates of pay, and other information
22 used to formulate a damages model. Plaintiff's counsel are confident they obtained sufficient
23 information to understand the law and facts of this case and make an informed decision regarding
24 the proposed settlement and whether it is fair and reasonable. [Brouillette Decl., ¶¶ 6, 14.]

25 Next, the proposed settlement falls within the range of reasonableness warranting preliminary
26 approval. The proposed settlement involves a significant sum that, when distributed, will confer
27 direct monetary benefits on the class members. As described above, each class member will be
28 entitled to a monetary payment without having to file a claim and each payment will be relative to

1 the value of his or her potential claims. Through the information exchanged and analysis undertaken,
2 Plaintiff and counsel weighed the risks of continued litigation against the benefits of the proposed
3 settlement and determined settlement to be the most reasonable option.

4 Using the data obtained from Defendant, Plaintiff ran various calculations and estimated
5 Super T's likely maximum exposure on the class claims at approximately **\$400,500**, including about
6 \$259,000 on the unpaid wage/off the clock claim, \$19,550 on the unreimbursed expense claim,
7 \$44,000 on the wage statement claims, and \$78,000 on the waiting time penalty claims. [Brouillette
8 Decl., ¶ 15.] Plaintiff substantially discounted these amounts, however, to account for Defendant's
9 various defenses as to both class certification and the merits.

10 First, on the unpaid wage claims, Plaintiff alleged Super T's compensation plans failed to pay
11 for all hours worked and particularly failed to compensate employees for non-driving time. Cardenas
12 v. McLane Foodservices, Inc. (C.D. Cal. 2011) 796 F.Supp.2d 1246, 1252; Armenta v. Osmose, Inc.
13 (2005) 135 Cal.App.4th 314, 320. More specifically, Plaintiff contends that non-driving activities
14 such as waiting while trucks were loaded/unloaded, washing trucks, undergoing inspections, etc.,
15 either were not compensated at all or were compensated at rate lower than the applicable minimum
16 wage. Plaintiff also contends that Super T's policies resulted in meal periods occurring during the
17 truck loading/unloading process and, coupled with another policy requiring drivers to remain with
18 the vehicles, resulted in meal periods essentially being "on duty" and compensable. As a result, per
19 Plaintiff, he and the class members lost at least 2 hours of compensable time each shift due to this
20 off the clock and uncompensated work. In response, Defendant argued that California law did not
21 apply to inter-state drivers when they did not primarily work in California; its timekeeping and
22 payroll policies accurately tracked and paid for all employee time, and that it specifically provided
23 for compensation for non-driving activities. It also argued that its policies prohibited any "off the
24 clock" work and further California's meal break requirements were preempted by federal hours of
25 service regulations governing certain commercial truck drivers. Accordingly, per Super T, if any off
26 the clock work occurred it was intermittent and infrequent, against company policy, and done without
27 the employer's knowledge or consent. For these reasons, per Super T, class certification of this issue
28 would be impossible because innumerable individual inquires would be required to determine what

1 “off the clock” occurred and if it was compensable. [Brouillette Decl., ¶ 16.]

2 On the expense reimbursement claim, Plaintiff alleges that use of his personal cellular phone
3 was necessary and consequential to his employment duties for purposes of navigation and
4 communicating with supervisors and dispatch. Defendant did not reimburse employees for the cost
5 associated with the use of the personal cellular phones for Defendant’s benefit. Cochran v. Schwan’s
6 Home Serv. (2014) 228 Cal.App.4th 1137, 1144. In response, Super T argued it provided employees
7 with all tools and equipment necessary to perform their job duties, including a tablet for each vehicle,
8 and, to the extent employees used their own phones, it was purely for personal convenience, was not
9 necessary to their employment, and therefore was not reimbursable. [Brouillette Decl., ¶ 17.]

10 As far as the wage statement claim, Plaintiff alleges Super T’s wage statements failed to state
11 the correct hours worked, number of piece rate units earned, and gross and net wages on their face.
12 He further alleges derivative claims under Labor Code § 226 (inaccurate wage statements) and §§
13 201-203 (waiting time penalties). These derivative claims are based on the unpaid wage claims and
14 will rise or fall along with those primary claims, in addition to being subject to “good faith” and other
15 defenses available to Defendant. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157,
16 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even though
17 the class prevailed on the merits on the underlying claim for failing to pay living wages). Defendant
18 argued further that the wage statements accurately contained all required information, and that acted
19 in good faith all times with respect to payment of wages. Accordingly, Plaintiff discounted these
20 claims significantly in light of these multiple potential defenses. [Brouillette Decl., ¶ 18.]

21 As far as potential PAGA liability, the alleged aggrieved employees theoretically are entitled
22 to penalties totaling about \$164,000 should Plaintiff prevail on all claims, establish violations of the
23 multiple Labor Code sections at issue, and secure the maximum penalty on all claims as to all pay
24 periods at issue. As with the class claims, Plaintiff discounted the potential PAGA penalties based
25 on Defendant’s various defenses on the merits and also accounted for the Court’s wide discretion to
26 reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington
27 v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of \$5 per pay period
28 after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions

(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated \$5,000 to PAGA penalties. [Brouillette Decl., ¶¶ 19-20.]

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

Taking into account all of the above-discussed risk factors, Plaintiff calculated Defendant's exposure on the class claims at around **\$100,000** on a risk-discounted basis and, accordingly, the settlement represents slightly more than the estimated recovery after trial. Given Defendant's multi-layered defenses and all other potential risks of continued litigation, a total recovery for the class of \$108,791, which will result in average award of around \$274 per class member, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. [Brouillette Decl., ¶¶ 21-22.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement process...even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000)

85 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court”). Importantly as well, the proposed settlement is non-reversionary and will provide immediate benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at <http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf> (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

V. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to Apex for its services as the Settlement Administrator. As set forth in the Declaration of Karla Nava, Apex performed and will continue to perform its required duties through final distribution of the settlement funds and incurred \$5,500 in fees and expenses. [Nava Decl., ¶ 19.] Plaintiff accordingly requests the Court approve payment of \$5,500 to Apex from the GSA. [Brouillette Decl., ¶ 23.]

VI. PLAINTIFF’S ENHANCEMENT AWARD

Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of \$10,000 for his service in bringing these claims on behalf of the Class. The request is reasonable given the risks he undertook on behalf of the Class Members, and by contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendant’s litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing each at risk of discrimination by future prospective employers. As set forth in more detail in his declaration

1 filed with the preliminary approval motion, among taking many other actions assisting in the
2 successful litigation of this case, Plaintiff provided substantial factual information and documents
3 to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and
4 kept abreast of all significant developments. [Declaration of Shawn Vasquez, ¶¶ 2-9; Brouillette
5 Decl., ¶ 24.] Accordingly, the requested enhancement payment to Plaintiff is appropriate and
6 justified as part of the settlement. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting
7 cases awarding class representatives service and incentive payments ranging from \$2,000 to
8 \$25,000).

9 **VII. THE REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE AND**
10 **SHOULD BE APPROVED**

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

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

24 As addressed in detail above, at the time the parties reached the tentative settlement
25 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
26 some or all the claims would not be certified for class treatment, as Defendants had strong
27 arguments that its compensation policies were legal and properly compensated the class
28 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 he pursued class certification, trial, and an almost certain appeal. [Brouillette Decl., ¶¶ 16-20.]

Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to obtain, and the settlement provides substantial cash payments to Class Members, as they will receive a very robust \$32.18 per work week and the highest is almost \$3,800. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement – there are no objections and no opt outs to the settlement. [Nava Decl., ¶¶ 11-12.]

B. The Requested Fee Award Is Reasonable and Appropriate

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

As part of the Settlement, Defendants agreed not to object to an award of no more than 1/3 of the GSA for attorney's fees, or \$36,263.67, and up to \$12,500 in reimbursement for litigation costs and expenses (only \$10,873.46 is requested). Such a fee is commensurate with what the market would provide for similar services and the Court therefore can most certainly enforce the agreement. As California's Court of Appeal has instructed:

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

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

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

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

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

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

13 The recognized advantages of the percentage method-including relative ease of
14 calculation, alignment of incentives between counsel and the class, a better
15 approximation of market conditions in a contingency case, and the
16 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.

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

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

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

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

6 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
7 this action of no more than 1/3 of the GSA, and specifically \$36,263.67. The percentage
8 requested is justified for the reasons set forth further below, and comports with fee awards
9 calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements
10 shows that courts have historically awarded fees in the range of 20 to 50 percent, depending
11 upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985)
12 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from
13 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually
14 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to
15 assure that the fees do not consume a disproportionate part of the recovery obtained for the
16 class, although somewhat larger percentages are not unprecedented.").

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

18 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
19 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
20 an objective measure of the work performed into the calculation of a reasonable attorney fee."
21 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 93.7 hours of time on this matter,
22 resulting in a modest and very reasonable lodestar of \$73,435.

23 Over the two plus years this matter has been pending, Crosner Legal's efforts have
24 included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class,
25 including legal research, research into similar claims and claims against other employers in the
26 same industry, and attempts to locate and contact other employees of the Defendant; (2) drafting a
27 PAGA notice letter; (3) drafting the initial complaint and related documents; (4) case management,
28 including communications with defense counsel, meeting and conferring/preparing case

1 management statements, etc.; (5) lengthy discussions with defense counsel regarding
2 settlement/mediation and informal discovery needed for meaningful settlement discussions;
3 (6) engaging in substantial informal discovery, including propounding informal discovery
4 “requests” and reviewing documents and other information produced; (7) working with a
5 consulting expert on the analysis of Defendant’s informal production; (8) drafting a mediation brief
6 and accompanying damages model after review and analysis of defendant’s formal and informal
7 discovery production; (9) attending an all-day mediation; (10) negotiating and drafting the
8 settlement agreement and related documents; (11) drafting the consolidated amended complaint to
9 effectuate the settlement; (12) drafting motion for preliminary approval, and attending the hearing;
10 (13) administration of the settlement, including communications with the Settlement Administrator
11 and settlement class members; (14) final approval and attorney’s fees, and attending the final
12 approval hearing; and (15) extensive communications with the Plaintiff regarding case status, case
13 investigation and document review, mediation, and settlement terms. [Brouillette Decl., ¶ 8.]
14 Additionally, Class Counsel will incur additional time following final approval to, inter alia,
15 respond to class member inquiries, attend to distribution of settlement funds, and on the
16 compliance hearing. [Brouillette Decl., ¶ 26, Exh. 2.]

17 In pursuing this matter, Class Counsel incurred total attorney’s fees of \$73,435, and the
18 lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a
19 successful conclusion (93.7 attorney hours). [Brouillette Decl., ¶¶ 27-40.] The requested attorney
20 hourly rates are reasonable and comport with hourly rates charged by other attorneys with similar
21 experience in this practice area in California. On a lodestar basis, the fee request of \$36,263.67 is
22 less than the base lodestar and accordingly there is no request for lodestar modifier. Plaintiff
23 submits, however, that this supports the reasonable of the fee request since the amount sought
24 on a percentage basis is less than the actual value of the services rendered when measured via
25 traditional hourly billing.

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

28 What has now emerged in most fee award decisions is the recognition that fee

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

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

13 **1. The Results Achieved.**

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

28 /////

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

2 At the time of filing the complaint, Class Counsel recognized that they would have to
3 expend a substantial amount of time and advance significant costs to prosecute a statewide
4 class action suit with no guarantee of compensation or reimbursement, in the hope of
5 prevailing against a sophisticated company represented by first-rate attorneys. Despite
6 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
7 of class certification and the ability to prove class-wide and individual damages. In light of the
8 highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would dig
9 in and attempt to bury their small firm in work. Given the small size of Class Counsel's firm,
10 not receiving any compensation for several years while simultaneously advancing litigation
11 costs posed considerable risk and difficulty. [Brouillette Decl., ¶¶ 41-42.]

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

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

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

22 There is a substantial difference between the risk assumed by attorneys being paid
23 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
24 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249,
25 1256. The attorney working on a contingent basis can only log hours while working
26 without pay towards a result that will hopefully entitle him to a market fee considering the
27 risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee
28 attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this risk

1 in this all or nothing contingent fee case wherein the necessity and financial burden of
2 private enforcement makes the requested award appropriate.

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

12 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate the
13 investment of unnecessary time in a case, and the adverse resolution of any one of several
14 difficult issues present in this matter could have doomed the entire effort. As discussed, the
15 attorney's fees in this case were not only contingent but fairly risky, and there was always a
16 distinct possibility Plaintiff's counsel would receive nothing for any number of reasons.
17 [Brouillette Decl., ¶¶ 41-42.] Accordingly, the contingent nature of the fee and the financial
18 burdens on Class Counsel also support the fee requested.

19 5. Awards in Other Cases

20 As discussed, the attorney's fees requested by Class Counsel are within the range of
21 fees awarded in comparable cases, as California courts regularly approve class action fee
22 awards amounting to 1/3 of a common fund, as approved by the California Supreme Court in
23 Lafitte. Additionally, review of class action settlements over the past 10 years shows that the
24 courts have historically awarded fees in the range of 20 to 50 percent, depending upon the
25 circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618
26 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to
27 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50%
28 of the fund is the upper limit on a reasonable fee award from a common fund in order to assure

1 that the fees do not consume a disproportionate part of the recovery obtained for the class,
2 although somewhat larger percentages are not unprecedented."). Class Counsel's requested
3 fees equal to 33.33% the gross amount recovered on behalf of the class and are well within the
4 range of reasonableness under either the percentage of the recovery or the lodestar method in
5 light of the contingent risk assumed, the delay in payment, the result achieved, and the overall
6 quality of the representation.

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

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

18 As explained in the Brouillette Declaration, Class Counsel incurred a total of
19 \$10,873.46 in expenses incurred in connection with this litigation. These expenses include
20 the amounts paid for court filing fees, service of process, expert fees, postage, and
21 mediation fees, all of which are costs normally billed to and paid by the client. These costs
22 were reasonably incurred in the prosecution of this matter, and were necessary for the
23 successful prosecution of the case and accordingly Plaintiff's counsel requests
24 reimbursement for costs in the amount of \$10,873.46, consistent with the cap imposed
25 under the Settlement Agreement. [Brouillette Decl., ¶¶ 43-44.]

26 **VIII. CONCLUSION**

27 For all the foregoing reasons, Plaintiff respectfully requests that the Court grant this motion
28 and grant final approval of the proposed class action settlement and approve the payment of PAGA

1 penalties to the State. Plaintiff further requests the Court approve payment of the Settlement
2 Administrator's fees and expenses, approve the requested class representative enhancement
3 payment, approve the award of attorney's fees and costs as requested, and enter judgment in this
4 action. Finally, Plaintiff requests the Court set a final compliance hearing for January 29, 2027, or a
5 later date convenient for the Court.

6
7 Dated: January 5, 2026

CROSNER LEGAL, PC

8
9
10 By: 

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