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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

YOLANDA PONCE, individually and on behalf of others similarly situated, and as an aggrieved employee and Private Attorney General, Plaintiff, vs. LUCKY 7 KING, INC. DBA LUCKY 7 SUPERMARKET, a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. 23CV411258 *Assigned for All Purposes to: Judge Theodore C. Zayner, Department 19* **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES THERETO** Hearing Date: February 11, 2026 Hearing Time: 1:30 p.m. Department: 19 Complaint Filed: February 17, 2023 Trial Date: None Set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on February 11, 2026, at 1:30 p.m. in Department 19 of the Santa Clara County Superior Court, located at 191 North First Street, San Jose, California 95113, Plaintiff Yolinda Ponce ("Plaintiff") will apply to this Court for an order granting final approval of the Joint Stipulation of Class Action and PAGA Settlement and ("Settlement" or "Settlement Agreement") between Plaintiff and Defendant Lucky 7 King, Inc. dba Lucky 7 Supermarket. ("Defendant") (collectively with Plaintiff, "the Parties"). As part of that approval, Plaintiff will request that the Court:

1. Grant final approval of the Settlement attached to the Declaration of Heather Davis, Esq., on the grounds that the proposed settlement is fair, adequate, and reasonable because:
   a. The non-reversionary Net Settlement Amount of approximately $241,828.63 will be paid out to the Participating Class Members;
   b. Proper Notice was provided to all Class Members pursuant to the terms of the Settlement;
   c. No objections were submitted to the Settlement; and
   d. No Class Member requested to be excluded from the settlement, leaving 179 Participating Class Members;
2. Award attorneys' fees in the amount $175,000.00 (35% of the Gross Settlement Amount) to Protection Law Group, LLP ("Class Counsel");
3. Award costs in the amount of $17,921.37 to Class Counsel for litigation costs and expenses;
4. Award payment of $7,750.00 to the Settlement Administrator, Phoenix Settlement Administrators, for the costs of settlement administration;
5. Award a class representative enhancement payment of $7,500.00 to Plaintiff
7. Approve payment of $50,000.00 for penalties pursuant to California Labor Code Section 2698 *et. seq*. the Private Attorneys General Act of 2004 ("PAGA") and the distribution of seventy-five percent of these penalties ($37,500.00) to the California Labor and Workforce Development Agency ("LWDA") and twenty-five percent ($12,500.00) to all current and former

non-exempt employees of Defendant who were employed by Defendant in the state of California ("PAGA Members") at any time during the period from November 2, 2022 through May 3, 2025, ("PAGA Period"); and

7. Order the funding and distribution of the Gross Settlement Amount in the manner set forth in the Settlement.

The motion is based upon this notice; the attached memorandum of points and authorities; the Declaration of Heather Davis, Esq. and all exhibits attached thereto; the Declaration of Plaintiff Yolanda Ponce; the Declaration of Lluvia Islas on behalf of Phoenix Settlement Administrators and all exhibits attached thereto; the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

DATED: January 20, 2026

Respectfully Submitted,

PROTECTION LAW GROUP, LLP

By: ______________________
Heather Davis
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Yolanda Ponce ("Plaintiff") seeks final approval of a class action and PAGA settlement with Defendant Lucky 7 King, Inc. dba Lucky 7 Supermarket ("Defendant"). The settlement provides for: (1) a non-reversionary Gross Settlement Amount of $500,000.00; (2) attorneys' fees in the amount of $175,000.00 (35% of the Gross Settlement Amount); (3) actual litigation costs and expenses incurred by Class Counsel in the amount of $17,921.37; (4) payment of $50,000.00 for PAGA Penalties (75% of which shall be distributed to the LWDA and 25% to PAGA Members); (5) payment of $7,750.00 to the Settlement Administrator, Phoenix Settlement Administrators for costs associated with administration of the settlement; and (6) a requested class representative enhancement payment of $7,500.00 to Plaintiff. The result is a Net Settlement Amount ("NSA") of $241,828.63 that will be distributed to a Class of 179 Participating Class Members who worked for Defendant as an hourly-paid or non-exempt employee in the State of California at any time from February 17, 2019, through May 3, 2025. Participating Class Members will receive an average payment of approximately $1,351.00 from the class portion of their Individual Settlement Payment with a high payment of $7,753.54. In addition, PAGA Members, defined as all hourly-paid non-exempt employees of Defendant who were employed by Defendant in the State of California at any time from November 2, 2022, through May 3, 2025, will receive an average PAGA Payment of approximately $69.83 and a high payment of $391.98. Declaration of Lluvia Islas of Phoenix Settlement Administrators ("Phoenix Decl.") ¶ 16, 18. This is an exceptional result that exceeds the value obtained in many similar cases.

At Preliminary Approval, the Court established a presumption of fairness after extensively analyzing the terms of the Settlement and underlying settlement efforts. This presumption of fairness is confirmed here following notice of the proposed settlement to the class. To date, no Class Member has submitted a request for exclusion, and there have been zero objections to the terms of the settlement. Phoenix Decl. ¶ 8-10. The lack of objections to the terms of the settlement and the fact that no class member submitted a request for exclusion, (a 100% participation rate by the Class) is further evidence, in addition to the factors extensively analyzed at Preliminary Approval that demonstrate the Settlement is a fair and reasonable result. Accordingly, the Court should approve the proposed Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant Lucky 7 King, Inc. dba Lucky 7 Supermarket ("Defendant") is a full-service supermarket, that sells produce, grocery, bakery, and fresh meat in the San Jose area. Defendant operates approximately three different locations in San Jose, California. Defendant has employed Plaintiff to work for Defendant as a cashier since approximately August 2018. Declaration of Heather Davis in Support of Motion for Preliminary Approval ("Davis Decl.") ¶ 12-13.

On February 17, 2023, Plaintiff provided notice to the California Labor Workforce Development Agency ("LWDA") and Defendant of her intent to seek civil penalties under Labor Code § 2699, *et seq*. ("PAGA"). Davis Decl. ¶ 14. Also on February 17, 2023, Plaintiff filed her Class Action Complaint against Defendant in Santa Clara Superior Court, Case No. 23CV411258, asserting claims for: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely Paid; (6) Wages Not Timely Paid during Employment; (7) Non-Compliant Wage Statements; (8) Unreimbursed Business Expenses; (9) Unfair Business Practices. Davis Decl. ¶ 15.

On April 25, 2023, with more than sixty-five (65) days having elapsed since the mailing for Plaintiff's PAGA Notice and the LWDA not having indicated that it intended to investigate the violations discussed in the PAGA Notice, Plaintiff filed a First Amended Complaint ("FAC" or "Operative Complaint"), adding one (1) cause of action under the Private Attorneys General Act of 2004 ("PAGA") and sought to recover penalties for these same alleged violations. Davis Decl. ¶ 16. On April 28, 2023, Defendant filed its Answer to the FAC. Davis Decl. ¶ 17.

On June 15, 2023, Plaintiff served on Defendant Special Interrogatories, Form Interrogatories, a Demand for Production of Documents, and a Notice of Deposition of Defendant's Person Most Qualified. Davis Decl. ¶ 18.

On July 14, 2023, Defendant provided responses, objections, and a document production. The Parties thoroughly met and conferred regarding Defendant's responses and objections, and after Plaintiff's extensive meet and confer letters and the Parties' further telephonic efforts meet and confer, Defendant agreed to provide supplemental responses to Plaintiff's Special Interrogatories, and the Demands for Production of Documents. On August 21, 2023, Defendant served supplemental responses to Plaintiff's Request for Production of Documents and Special Interrogatories, Set One. The Parties also thereafter entered into a Protective Order for the production of sensitive documents and drafted and mailed a *Belaire-West* Notice prior to releasing the contact information of the putative class members to Plaintiff's Counsel. Davis Decl. ¶ 19-21.

Following Defendant's production of supplemental documents and responses, the Parties met and conferred and agreed to attend private mediation and informally stay discovery pending the mediation. The Parties agreed to exchange informal discovery and attend mediation in the Action with Kevin Barnes, Esq., a mediator with substantial experience handling wage and hour matters. Davis Decl. ¶ 22.

In advance of mediation, Defendant provided Plaintiff's Counsel with extensive formal and informal discovery including all relevant policies and handbooks in place during the Class Period, Plaintiff's personnel file, time and payroll data for Defendant's direct hires, and figures and information regarding the class size and composition. With this data, Plaintiff's Counsel and their retained expert were able to perform a comprehensive damages analysis and estimate Defendant's potential violations, liability, and exposure, including, and not limited to, analyzing time and pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, unpaid meal and rest period premiums, rounding, overtime and premium payments, etc. This discovery and investigation allowed Plaintiff's Counsel to perform a comprehensive damages analysis and estimate Defendant's potential liability. Davis Decl. ¶ 23.

After extensive review of these documents, on August 6, 2024, the Parties attended a private mediation with Kevin Barnes, Esq. After a full-day of hotly contested negotiations, the Parties were unable to come to a resolution, but agreed to continue informal negotiations through the mediator and continue with discovery. The Parties began undertaking further discovery while continuing negotiations. Davis Decl. ¶ 24.

On October 21, 2024, Plaintiff send a Notice of Deposition of Defendant's Person Most

Qualified ("PMQ"), which was set for November 11 and 12, 2024. On November 6, 2024, Defendants sent an objection to the Deposition Notice, as the date did not work with Defendant's calendar. On January 22, 2025, Plaintiff served an Amended Notice of Deposition of Defendant's PMQ, set for March 6 and 7, 2025. Davis Decl. ¶ 25-27.

Following service of the Amended Notice of Deposition, the Parties met and conferred again, and agreed that pending the PMQ Deposition, the Parties would once again attempt informal negotiations through the mediator, Mr. Barnes. Davis Decl. ¶ 28.

Through a combination of formal and informal discovery, Defendant produced an updated records and information regarding the number of putative class members, the number of current versus former employees, the total workweeks and pay periods worked by the Class, and the Class Members' average rate of pay. This allowed Plaintiff to conduct a class-wide assessment and analysis of potential damages. Davis Decl. ¶ 29.

Thereafter, with the help of the mediator, the Parties were able to reach an agreement on the terms of a class and PAGA settlement. The Parties spent considerable time negotiating and finalizing the terms of the long form agreement, and on April 17, 2025, the Parties fully executed the Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement" or "Settlement"). Davis Decl. ¶ 30, Ex. 1.

On May 5, 2025, Plaintiff filed her Motion for Preliminary Approval of the proposed class action and PAGA Settlement and uploaded the proposed settlement to the LWDA. Davis Decl. ¶ 31. On or about July 29, 2025, the Court issued a tentative ruling granting preliminary approval of the settlement conditioned about minor modifications to the Class Notice and the requirement that the Parties designate a cy pres recipient for unclaimed funds rather than sending such funds to the state controller. Davis Decl. ¶ 32. On July 30, 20205, the Parties entered into a stipulation to modify the Settlement and distribute any unclaimed settlement funds to CASA (Court Appointed Special Advocates for Children). Davis Decl. ¶ 33, Ex. 2 Thereafter, on or about August 4, 2025, the Court signed the proposed order granting Plaintiff's Motion for Preliminary Approval. Now, following notice of the settlement to the class, and the opportunity for class members to opt out or be heard, Plaintiff moves for Final Approval of the proposed settlement. Davis Decl. ¶ 34-35.

III. THE ADMINISTRATION PROCESS AND PLAN OF DISTRIBUTION

After receiving the order granting Plaintiff's Motion for Preliminary Approval Class Counsel sent Phoenix Settlement Administrators ("Phoenix"), a copy of the Settlement Agreement along with the Court-approved Notice Packet and a copy of the Court's order granting preliminary approval of the settlement. The Agreement included the formula for determining the estimated sum to paid to each individual. Davis Decl. ¶ 36-37.

On August 21, 2025, Phoenix received the class list from Defendant which contained the name, social security number, last known address, start and end dates of employment, and workweeks worked by each Class Member during the Class Period. The final class list included 179 individuals. Davis Decl. ¶ 38. Phoenix Decl. ¶ 3.

After receiving the Order and Notice Packet, and as part of the preparation for mailing, Phoenix processed all 179 names and addresses contained in the class list against the National Change of Address database maintained by the U.S. Postal Service in an attempt to verify the Class Members mailing address and then mailed the Class Notice Packet to the Class Members on September 8, 2025. If a notice was returned to Phoenix without a forwarding address, Phoenix performed a computerized skip trace in an effort to obtain an updated address to remail the Notice Packet. The Settlement Administrator also worked with Defendant's Counsel to deliver any Notices that had been returned as undeliverable that were sent to current employees of the company. Using these processes, Phoenix successfully delivered 11 out of 34 returned notices. Phoenix Decl. ¶ 4-7. Davis Decl. ¶ 39.

Following final approval of the settlement and the occurrence of the effective date the Gross Settlement Amount shall be funded in two separate payments. The First Installment of Three Hundred and Fifty-Thousand Dollars ($350,000.00) shall be paid within 30 days of the Effective Date (the "First Installment"). The Second Installment payment of One Hundred and Fifty-Thousand Dollars ($150,000.00) and all applicable employer-side payroll taxes shall be paid within 12 months of the First Installment. Within 14 days of the complete funding of the Gross

Settlement Amount, the Settlement Administrator will issue court approved payments for (a) Individual Settlement Payments; (b) the PAGA Penalties to the LWDA; (c) the Class Representative Incentive Payment; (d) Class Counsel's Fees and Costs; and (e) Settlement Administration Costs. Davis Decl. ¶ 40-41; Settlement Agreement ¶ 39, 41.

IV. STANDARD OF REVIEW FOR FINAL APPROVAL

The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th1794 (1996). California courts look to federal authority for guidance with class action settlements. *Id.* At 1801, n.7. "In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved of on other grounds).

Accordingly, a court's decision to approve a class action settlement may be reversed only upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1026 (9th Cir. 1998). To determine whether the settlement is fair, courts consider relevant factors such as "the strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed, the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Dunk*, 48 Cal.App.4th at 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba*, 91 Cal.App.4th at 245 (disapproved of on other grounds).

In considering the class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.,* 85 Cal.App.4th 1135, 1146 (2000). The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement taken as a whole is "fair, adequate, and reasonable." *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 55 (2008). Even if the relief afforded by the proposed settlement is substantially narrower than it would be if the lawsuit was to be successfully litigated, that 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 prolonged litigation. *Id*. The burden is on the proponent of the settlement to show that it is fair and reasonable. *Id.* At 245 (disapproved of on other grounds). However, a presumption of fairness exists where: (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. *In re Microsoft I-V Cases,* 135 Cal.App.4th 706, 723 (2006).

V. <u>THE SETTLEMENT IS PRESUMED FAIR</u>

Because this court preliminarily approved the Settlement, it necessarily determined that the Settlement appeared to be fair and reasonable. The same factors that allowed the Court to preliminarily approve the settlement apply here and are reinforced in these moving papers including that: (1) the Settlement was reached through arm's-length bargaining; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; and (3) class counsel are experienced in similar litigation. Additionally, the reaction of the class members, which was unknown at preliminary approval, also supports the reasonableness of the proposed Settlement. *See generally,* Davis Decl. ¶ 42-49.

A. The Settlement Was Reached Through Arm's Length Bargaining.

California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." *Wershba*, 91 Cal. App. 4th at 245; *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009). Here, the Settlement was reached following a full day of mediation on August 6, 2024, with Kevin Barnes, Esq., a mediator with substantial experience involving wage and hour class actions and extensive settlement discussions following mediation. The settlement negotiations were at arms' length and, although conducted in a professional manner, were adversarial. While the Parties were unable to reach an agreement to resolve this matter at mediation, following mediation and further discovery and investigation, the Parties met and conferred and continued informal settlement discussions through the mediator in an effort to resolve the case. After extensive settlement discussions, the Parties accepted a proposal made by the mediator to resolve this matter for a Gross Settlement Amount of

$500,000.00 when at first resolution appeared unlikely. At all times Defendant maintained that it had complied with California wage and hour laws. Similarly, if this matter had not resolved, Plaintiff was prepared to vigorously litigate this dispute including through class certification and trial. The proposed Settlement was reached at the end of a process that was neither fraudulent nor collusive. To the contrary, counsel for the Parties advanced their respective positions throughout the settlement negotiations. Davis Decl. ¶ 43-44.

B. There was Sufficient Investigation, Discovery and Analysis by Experienced Counsel

Class Counsel conducted significant investigation into the claims alleged by Plaintiff before reaching a settlement in this matter. Class Counsel communicated with Plaintiff about her work experience with Defendant, conducted legal research regarding the applicable Labor Code Sections and thoroughly researched Defendant's employment policies and practices and conducted extensive formal and informal discovery. Davis Decl. ¶ 45 . As set forth extensively in Plaintiff's Motion for Preliminary Approval, prior to mediation, Plaintiff propounded substantial discovery including Form Interrogatories, Special Interrogatories, and Requests for Production. The Parties extensively met and conferred regarding this discovery, and Defendant's responses, and Defendant eventually provided supplemental responses and produced thousands of pages of documents. The Parties also negotiated and sent out a *Belaire-West* Notice allowing Plaintiff's Counsel to obtain the contact information of the putative class members in furtherance of their investigation. Prior to attending mediation Plaintiff's Counsel reviewed extensive documents and discovery including a sampling of the Class Members' time and payroll records, as well as Defendant's relevant employment policies. Defendant also produced extensive information regarding the size and composition of the class including the number of current and former employees, the total workweeks and pay periods worked by the Class, and the average rate of pay for hourly employees during the class period, and the number of employees and pay periods within the PAGA period. This discovery and investigation allowed Class Counsel to conduct a class-wide analysis of Defendant's potential damages, analyze the strengths and weaknesses of the case, and calculate Defendant's potential exposure. The Parties extensively briefed these issues, provided this analysis to the mediator, and debated their respective positions both at mediation and during the informal settlement negotiations that followed. Davis Decl. ¶ 46.

Moreover, the settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel's experience and the extensive investigation allowed Plaintiff to enter this Settlement aware of the risks associated with the case and permitted Class Counsel to negotiate an informed, reasonable, and intelligent Settlement. After substantial discovery and investigation, it is Class Counsel's opinion that the settlement is in the best interest of the class as it provides a guaranteed result over a reasonably short period as opposed to waiting years for the same, or possibly worse result. Davis Decl. ¶ 47-48.

C. There Have Been No Objections and No Requests for Exclusion

California courts have consistently found that a small number of objectors indicates the class's support for a settlement and strongly favors final approval. *See Wershba,* 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners,* 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors). Here, as of the filing of this Motion, there have been no objections to the settlement and no class member has requested to be excluded (a participation rate of 100% of the Class). Phoenix Decl. ¶ 8-10 . The lack of objections and total participation in the Settlement by the Class further demonstrate that the proposed settlement is both fair and reasonable. Davis Decl. ¶ 49.

VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

A. The Standard For Attorneys' Fees In A Class Action.

Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement created. *See Dunk,* 48 Cal.App.4th at 1808. The ultimate goal is the award of a "reasonable" fee to compensate counsel for their efforts, irrespective of the method of calculation. *See Apple Computer, Inc. v. Super. Ct.,* 126 Cal.App.4th 1253, 1270 (2005). Trial courts have wide latitude in assessing the value of attorneys' fees and their decisions will not be disturbed on appeal absent a manifest abuse of discretion. *See Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorneys' fees awards should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. *Id.* at 47, 50. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Id.* at 53. Therefore, fees in class and representative actions should approximate the probable terms of a contingent-fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 47. The percentage-of-the-benefit approach is preferred in such cases because "it better approximates the workings of the marketplace than the lodestar approach." *Id.*

B. A Percentage of the Entire Fund is Appropriate.

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value made available to class members by the settlement. *See Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977). The California Supreme Court has urged trial courts to follow federal authority in this area. *See Green v. Obledo*, 29 Cal.3d 126, 146 (1981). The purpose of this equitable doctrine is to spread litigation costs among all beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent*, 557 F.2d at 769.

Courts have consistently recognized that class litigation is necessary to protect the rights of individuals whose injuries and/or damages are too small to economically justify individual representation. Accordingly, in determining a reasonable common fund fee award, courts award fees to serve as an economic incentive for lawyers to engage in class litigation that will permit increased access to the judicial system for meritorious claims and deter wrongdoing. *See* R. Pearle, *California Attorney Fee Awards* (CEB, 1993) §7A, p. 5-7; *Vincent*, 557 F.2d at 769.

Furthermore, a common fund award is not dependent on a determination of the actual amount claimed out of the fund by those entitled—it is the creation of the fund that is the crucial fact. In *Winslow v. Harold G. Ferguson Corp.*, 25 Cal.2d 274, 284 (1944), the California Supreme Court expressly held that "it is equitable that [the attorney's] compensation and expenses should come from the entire fund saved for all classes concerned before it is distributed." Likewise, *Lealao* expressly recognizes that "in a traditional common fund case, [a percentage-based fee] may be calculated on the basis of the total fund made available rather than the actual payments made to the class." *Lealao*, 82 Cal.App.4th at 51. In *Wershba v. Apple Computer, Inc.*, the Court of Appeal definitively decided the issue in favor of granting attorneys' fees that are a percentage of the total value of the settlement obtained by the efforts of counsel. In determining reasonable attorneys' fees, the court valued a settlement based on the total value of the settlement made available to class members. 91 Cal.App.4th at 247 (disapproved on other grounds).

Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *Newberg on Class Actions,* 4th Ed. 2002, §14:6. According to *Newberg*, ". . . no general rule could be articulated as to what is a reasonable percentage of a common fund. Usually, 50 percent of the fund is the upper limit on a reasonable fee award . . . though somewhat larger percentages are not unprecedented." *Id. Newberg* further notes that <u>achievement of a substantial recovery with modest hours expended should not be penalized but should be rewarded for considerations of time saved by superior services performed</u>. *Id.*

The amount of attorney fees provided by the Settlement Agreement, *i.e.*, 35% of the Gross Settlement Amount, is clearly reasonable. Class Counsel risked substantial economic loss when they took this case on a contingency basis, knowing that there would likely be a long battle with an aggressive defense firm including the very real possibility of potential appeals. As a result of class counsel taking on this risk and the efforts of class counsel, the Class Members will now be able to recover for these claims. The requested fee therefore makes sense because (1) it is consistent with the private marketplace where contingent-fee attorneys are customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent class members in achieving the maximum possible resolution of the case; and (3) it encourages the most efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement. As such, Class Counsel has obtained a fair recovery for the Class which justifies a fee award based on the percentage of the common fund. *See* Davis Decl. ¶ 50-51.

C. The Fee is Reasonable Based on the Dunkel Factors

In *Camden I Condominium Association, Inc. v. Dunkel,* 946 F.2d 768, 772 (11th Cir. 1991), the court identified twelve factors to consider in awarding fees in a common fund case.[1] The court noted that, "the analysis in a common fund case focuses not on the Plaintiff's position as 'prevailing parties,' but on a showing that the fund conferring a benefit on the class resulted from their efforts" and thus in common fund cases "the monetary results achieved predominate over all other criteria." *Id.* at 774. Plaintiff will address some of the factors that are particularly relevant here.

1. Time and Labor Required

Class Counsel have aggressively litigated this case from the initial pleading to the settlement of this action. Class Counsel participated in case strategy and analysis and drafted, reviewed, and revised pleadings, including extensive investigation, analysis, and research prior to filing the lawsuit, during litigation, and in preparation for mediation as well as engaging in both formal and informal discovery. Plaintiff propounded Form Interrogatories, Special Interrogatories, and Requests for Production on Defendant and the Parties extensively met and conferred regarding this discovery with Defendant eventually providing supplemental responses and thousands of pages of documents. The Parties also prepared and sent out a *Beliare-West* Notice. Following this intensive discovery process Plaintiff's Counsel were able to convince Defendant to attend mediation and thereafter spent substantial time reviewing and analyzing documents and discovery in preparation for mediation and participating in settlement negotiations. Even after an agreement was reached in principle, Class Counsel spent numerous hours drafting and revising the Settlement Agreement, drafting the motion for preliminary approval, and coordinating the notice process with the settlement administrator. This case consumed hundreds of hours of Class Counsel's efforts. However, a settlement was finally achieved, despite all obstacles, because of the work performed by Class Counsel. Davis Decl. ¶ 52. In addition to Class Counsel's time, litigating this case also required counsel to incur significant costs. In total, more than $17,921.37 in costs were necessary

[1] These factors include the (1) time and labor required, (2) difficulty involved, (3) skill required, (4) preclusion of employment, (5) customary fee, (6) contingent or fixed fee, (7) time limitations, (8) results obtained, (9) experience of the attorney, (10) undesirability of the case, (11) relationship with the client, and (12) awards in similar cases.

to successfully resolve this case. Davis Decl. ¶ 70, Ex. 4. In light of the time expended and costs involved the requested attorneys' fees are reasonable.

2. The Skill Required to Perform Legal Services

In addition to the time and effort required this matter also required substantial skill to litigate. Substantial skill was necessary in order to adequately evaluate the alleged claims and negotiate the excellent settlement reached in this matter on behalf of the putative class members. Defendant felt strongly that its policies and practices had at all times complied with California law and that the alleged claims were not appropriate for class certification. Despite this, Class Counsel was able to use their substantial experience in complex wage and hour litigation to convince Defendant to discuss a potential settlement rather than proceed with further litigation. This settlement, against experienced defense counsel and despite the existence of several strong defenses, was made possible as a result of Class Counsel's expertise. Davis Decl. ¶ 53.

3. The Value, Amount, and Results Achieved

The Settlement represents a fair resolution of this case given the risks inherent in litigating the action through trial and possible appeals. Counsel obtained a non-reversionary Gross Settlement Amount of $500,000.00. Although Class Counsel predicts that Plaintiff would prevail on all causes of action at trial, a number of risks reduced the case's value. For instance, as discussed extensively in Plaintiff's Motion for Preliminary Approval, Defendant claimed there were substantial problems with respect to the manageability of Plaintiff's claims. Defendant raised issues with Plaintiffs' meal break claims regarding the necessity of individualized proof. Plaintiff faced similar difficulties with respect to their rest period claims, and claims for off-the-clock work. Defendant contended these issues would prevent Plaintiff from successfully recovering on these claims which were a major focus of the litigation. Despite these challenges, Defendant ultimately agreed to pay a non-reversionary Gross Settlement Amount of $500,000.00. This is an <u>outstanding</u> result. Davis Decl. ¶ 54.

4. Whether the Fee is Fixed or Contingent

Whether the representation was provided on a contingency basis, as it was in this case, is an important factor:

> **<u>A contingent fee must be higher than a fee for the same legal services paid as they are performed</u>** [and] [...] compensates the lawyer not only for the legal services he renders but for the loan of those services. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions.

Cates v. Chiang, 213 Cal.App.4th 791, 823 (2013).

The fact that this case was litigated on a contingent basis strongly supports the award of attorneys' fees requested by Plaintiff. If Class Counsel had been unsuccessful they would not have received any fee or recovered any portion of the expenses spent litigating this matter. Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained in this case. This risk is a relevant factor when considering the reasonableness of the requested fee. Davis Decl. ¶ 55.

D. The Fee is Reasonable Under a Lodestar Analysis

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other. This said, Courts have cautioned that the primary basis of the fee award in common fund cases remains the percentage of the fund method and have cautioned that class counsel <u>should not</u> necessarily receive a lesser fee achieving a speedy and timely result for class members in need of immediate relief. *See e.g. Vizcaino v. Microsoft Corp.*, 290 F. 3d. 1043, 1050 fn.1 (2002). Indeed, courts have noted that "it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement." *Id.* (quoting *Camden I Condominium Ass'n*, 946 F.2d at 773–74.)

Here, the lodestar is calculated based on the hours worked at reasonable prevailing hourly rates for the attorneys who worked on this matter. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131-1132 (2001). Counsel are entitled to compensation for every hour reasonably spent on the matter. *See id.* at 1133. Further, this amount may be enhanced and courts in California routinely apply multipliers between 1 and 4 to a party's requested lodestar amount based on some of the same factors identified above. *See Cates,* 213 Cal.App.4th at 822.

1. Counsel Spent a Reasonable Amount of Time

Reasonableness of hours is assessed by "the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" *Vo v. Las Virgenes Municipal Water Dist.*, 79 Cal.App.4th 440, 447 (2000). As discussed above, this case was highly contested and required a significant amount of time and labor. Defendant raised significant defenses and denied liability. Class Counsel invested significant time and labor into this matter even before this action was filed to investigate Defendant's policies, practices, business, and merits-based issues including significant time investigating and reviewing Plaintiff's personnel file, researching Defendant's organization and management, and strategizing how to certify the alleged claims and bring these claims to trial. Class Counsel also spent significant time drafting and revising the PAGA Notice sent to the LWDA, drafting and revising the complaints, and drafting the pleadings filed with the Court. Class Counsel propounded discovery, reviewed and analyzed Defendant's responses and document production and engaged in efforts to meet and confer with Defendant's counsel. Class Counsel drafted a *Belaire-West* Notice which was sent to the putative class members. As a result Class Counsel's diligent efforts the Parties were able to reach an agreement to attend mediation. In advance of mediation, class counsel engaged in extensive investigation, review, and analysis of the formal and informal discovery provided by Defendant so that they could effectively negotiate the proposed settlement. Class Counsel spent many hours reviewing the documents produced by Defendant and analyzing data from thousands of pages of documents. When the matter did not settle at mediation Class Counsel resumed discovery while continuing to engage in good faith settlement discussions with the help of the mediator. After an agreement was reached in principle class counsel spent significant time negotiating the terms of the settlement to obtain the best possible outcome for the class. Class Counsel spent hundreds of hours on this matter. In total, this Action consumed more than 245.50 hours of Class Counsel's efforts. Davis Decl. ¶ 62-63, Ex. 3. Accordingly, Class Counsel has spent a reasonable amount of time working on this matter.

2. Class Counsel's Hourly Rate is Reasonable

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this Action. *See Ketchum*, 24 Cal.4th at 1132-33. In awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *See id.*

As previously discussed, Class Counsel have been actively involved in this case from the filing of the initial complaint to completing these final approval papers. The professional background and experience and work performed on this matter support the requested rates for Class Counsel for the work performed on this matter. To date, the lodestar for Plaintiff's Counsel totals more than $159,575.00. Davis Decl. ¶ 56-63, Ex. 3.

3. The Use of a Multiplier Is Appropriate

The lodestar amount may be increased by applying a multiplier. See *Serrano*, 20 Cal.3d at 49. In California, "[m]ultipliers can range from two to four or even higher" and are routinely applied in the range requested by Class Counsel. *Chavez*, 162 Cal.App.4th at 66 (upholding 2.5 multiplier) ; *Vizcaino*, 290 F.3d at 1051 n.6 (noting multipliers of 1-4 are commonly applied) . Factors considered include: (1) the difficulty of the questions involved; (2) the skill displayed; (3) the extent to which the litigation precluded other employment; and (4) the contingent nature of the fee award and the associated risk. See *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001) .

In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases is necessary to fully compensate counsel for the loan of legal services and encourage competent counsel to take on fee award cases. *Ketchum*, 24 Cal.4th at 1132-1133. As the court noted, "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." *Id*. at 1133. Similarly, in *Greene v. Dillingham Construction*, 101 Cal.App.4th 418, 426 (2002), the Court of Appeal held that the trial court erred by refusing to consider contingent risk as a factor in the decision to apply a multiplier. The court recognized that "[t]he adjustment to the lodestar figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees." *Id*.

Here, the use of a multiplier of approximately 1.1 is appropriate. This matter involved difficult questions and required substantial skill by Class Counsel in order to obtain a settlement for the class. As noted above, this matter required substantial skill in order to review and analyze the data and information produced, to negotiate the settlement, and to analyze the strengths and weakness of the alleged claims including arguments regarding class certification and the alleged damages. Class Counsel were able to utilize their expertise in class and representative litigation in order to overcome these complex and difficult issues and obtain a substantial settlement on behalf of the putative class members where other Counsel may have been unable to achieve these results. And as noted above this settlement represents an outstanding result at the conclusion of hotly contested litigation. The settlement provides class members an average settlement payment of at least $1,351.00 and an estimated high payment of $7,753.54. This is an excellent result that exceeds the value obtained in many wage and hour cases. Davis Decl. ¶ 64-66. *See also* Phoenix Decl. ¶ 13-14.

Furthermore, Class Counsel assumed considerable risk in agreeing to litigate this case on a contingent basis. This risk is particularly relevant in light of the complex questions related to certification of the proposed claims, and the substantial hurdles that were required to be overcome. Given the complex nature of these claims many attorneys would have been unprepared to litigate these claims and unable obtain the settlement reached by Class Counsel. These risks were real, challenging, and significantly increased the contingent risk associated with litigating this matter. Davis Decl. ¶ 67.

As recognized by the California Supreme Court in *Ketchum*, these risks illustrate that if multipliers are not awarded to class counsel in the cases that are successfully settled class counsel will not be fully compensated because the lodestar in and of itself cannot account for contingent risk associated with the litigation. Further a decision to withhold a multiplier not only fails to compensate attorneys for this associated risk, but actively penalizes class counsel who obtain a timely and efficient result. Such would be the case here. Class Counsel were able to obtain a substantial settlement on behalf of the class without forcing the class members to wait years through class certification and potential appeals for a similar result.

Accordingly, given the contingent risk incurred by Class Counsel, the difficulty of the questions involved, the benefit conferred on the Class, and the skill displayed by Class Counsel, the application of a multiplier is appropriate. For these reasons, Plaintiff respectfully requests the Court award the requested attorneys' fees of $175,000.00 (35% of the Gross Settlement Amount). Davis Decl. ¶ 68-69.

VII. THE REQUESTED COSTS ARE FAIR AND REASONABLE

Class Counsel request the reimbursement of the costs incurred litigating this case in the amount of $17,921.37. These costs include filing fees, mediation fees, expert costs, and many others. This includes both $17,621.37 in current costs and $300 in future costs associated with the filing of this motion and additional expenses connected with filing a notice of entry of judgment and submitting a declaration regarding the distribution of the settlement. These costs are $2,078.63 less than the $20,000.00 allocated under the Settlement Agreement meaning these funds will be available for distribution to the Participating Class Members. These costs are both reasonable and were necessary for the successful resolution of this matter and should therefore be approved by the Court. Davis Decl. ¶ 70, Ex. 4.

VIII. THE INCENTIVE PAYMENT IS FAIR AND REASONABLE

Named plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles,* 186 Cal.App.4th 399, 412 (2010). The criteria courts may consider in determining whether to make an incentive award include: (1) the risks faced by the class representative; (2) the difficulties encountered; (3) the time spent; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) to the class representative. *See Vranken v. Atlantic Richfield Co.,* 901 F.Supp. 294, 299 (N.D. Cal. 1995).

Here, the requested Class Representative Enhancement Payment of $7,500.00, is fair and appropriate based on the substantial time and effort Plaintiff invested into bringing this suit and assisting counsel with the development of this case. Plaintiff spent substantial time working on this matter on behalf of the putative class. Plaintiff extensively discussed the proposed claims with Class Counsel and searched for documents in support of the alleged claims. When the Parties agreed to attend mediation Plaintiff spent substantial time speaking with and helping Class Counsel prepare for mediation and actively attempted to obtain information that would benefit the Class. Plaintiff reviewed the agreement, asked questions, and discussed the settlement with Class Counsel. These services unquestionably merit the requested enhancement award. *See* Declaration of Plaintiff Yolanda Ponce in Support of Plaintiff's Motion for Final Approval ¶ 2-9; Davis Decl. ¶ 71.

Further, in addition to the substantial time spent helping Class Counsel litigate this case, Plaintiff also faces substantial risks to her future employment by serving as the named representative in an employment lawsuit. Plaintiff still chose to bring this litigation on behalf of others and has put others interests ahead of her own. Further, Plaintiff has also agreed to enter into a broader individual release than that agreed to by the other Class Members. Despite this, Plaintiff has not received any compensation to date for her services helping to obtain the Class Members awards. Accordingly, Plaintiff should be compensated for efforts she made on behalf of others, the risks she undertook, and the services she has performed. Ponce Decl. ¶10-18; Davis Decl. ¶ 72-74.

IX. PAYMENT TO THE SETTLEMENT ADMINISTRATOR

Phoenix Settlement Administrators ("Phoenix") is seeking $7,750.00 for its costs associated with administration of the settlement. The Settlement Administrator is a necessary third-party who has performed substantial services on behalf of the putative class, and this payment should be approved by the Court. Davis Decl. ¶ 75; Phoenix Decl. ¶ 16.

X. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant the Motion for Final Approval and enter Judgment in this case pursuant to the terms of the Settlement.

DATED: January 20, 2026

Respectfully Submitted,

PROTECTION LAW GROUP, LLP

By: ______________________

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