

1 Eric K. Yaeckel [CSB No. 274608]

2 yaeckel@sullivanlawgroupapc.com

3 Cody D. Archer [CSB No. 361361]

4 cody@sullivanlawgroupapc.com

5 **SULLIVAN & YAECKEL LAW GROUP, APC**

6 2330 Third Avenue

7 San Diego, California 92101

8 (619) 702-6760 * (619) 702-6761 FAX

9 Attorneys for Plaintiff DAVID ALEGRIA, Individually, and on behalf of other members of the general
10 public similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN BERNARDINO**

13 DAVID ALEGRIA, Individually, and on
14 behalf of other members of the general public
15 similarly situated,

16 Plaintiff

17 v.

18 NEXEN TIRE AMERICA, INC., a Maryland
19 Corporation; and DOES 1-10, inclusive,

20 Defendants

CASE NO. CIVSB2304566

21 **MEMORANDUM OF POINTS AND
22 AUTHORITIES IN SUPPORT OF
23 PLAINTIFF'S *UNOPPOSED* MOTION FOR
24 FINAL APPROVAL OF (1) CLASS ACTION
25 SETTLEMENT; (2) ATTORNEYS' FEES
26 AND COSTS; and (3) CLASS
27 REPRESENTATIVE AWARDS**

Date: October 14, 2026

Time: 8:30 a.m.

Judge: Hon. Kevin C. Lee

Dept.: S26

TABLE OF CONTENTS

I.	Summary of Motion..	1
II.	Updated Factual and Procedural History.....	1
III.	Settlement Terms.....	2
1.	Contingent Nature of the Settlement.....	2
2.	Description of the Settlement Classes.....	3
3.	Appointment of Settlement Claims Administrator.....	3
4.	Scope of the Release.....	3
5.	Cash Payment and Allocation.....	4
6.	Contingent Costs.....	4
IV.	Controlling Law.....	5
A.	Final Approval of Class Action Settlements.....	5
B.	Attorneys' Fees.....	6
C.	Class Representative Enhancements.....	7
V.	Argument.....	8
A.	The Proposed Settlement Is Made in Good Faith.....	8
1.	Strength of Plaintiffs' Case and Investigation and Discovery	8
2.	The Risk, Expense, Complexity, and Likely Duration of Further Litigation	9
3.	The Experience and Views of Counsel.....	10
4.	Presence of a Governmental Actor.....	11
5.	Reaction of the Class Members to the Proposed Settlement.....	11
B.	The Requested Attorney's Fees and Costs Are Reasonable.....	11
1.	The Contingent Nature of the Fee Agreement, and Inherent Risk Therein, Supports Awarding a <i>Percentage of the Recovery</i>	12
2.	The Continuing Obligation to Devote Time and Effort to the Litigation	13
3.	The Extent to which the Litigation Precluded Other Employment	13
4.	The Experience, Reputation, and Ability of the Attorneys who Performed the Services, and the Skill They Displayed in Litigation	13

1	5. The Amount Involved and the Results Obtained on Behalf of the	
2	Class.....	14
3	6. A Percentage of the Common Fund Award is Proper	14
4	7. The Lodestar Cross-Check	15
5	8. The Reasonableness of the Hourly Rates.....	15
6	9. No Lodestar “Multiplier” is Necessary	17
7	10. The Amount of Costs	17
8	C. The Requested Class Representative Enhancement Is Reasonable	17
9	VI. Conclusion.....	19

TABLE OF AUTHORITIES

CASES

<i>Beasley v. Wells Fargo Bank</i> (1991) 235 Cal.App.3d 1407, 1419	12
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	14
<i>Boeing v. Van Gemert</i> (1980) 444 U.S. 472, 478.....	12,15
<i>Brinker Rest. v. Superior Court</i> (2012) 53 Cal. 4th 1004, 1051	8
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	14
<i>Cellphone Termination Fee Cases</i> (2010) 186 Cal.App.4th 1380, 1394-1395.....	7
<i>Chaves v. Netflix, Inc.</i> (2008) 162 Cal. App. 4th 43.....	5,7,14
<i>Clark v. Am. Residential Servs. LLC</i> (2009) 175 Cal.App.4th 785, 804.....	8
<i>Donohue v. AMN Services, LLC</i> 11 Cal.5th 58 (2021).....	10,13,16
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal. App. 4th 1794.....	6
<i>Estate of Stauffer</i> (1959) 53 Cal.2d 124, 132.).....	13
<i>Golba v. Dick's Sporting Goods, Inc.</i> (2015) 238 Cal.App.4th 1251, 1270	7
<i>Guippone v. BHS&B Holdings, LLC</i> 2011 U.S. Dist. LEXIS 126026 *20 (S.D.N.Y. Oct. 28, 2011).....	18
<i>Hernandez v. Vitamin Shoppe Indust., Inc.</i> (2009) 174 Cal. App. 4th 1441.....	6
<i>In re Ampicillin Antitrust Litig.</i> (D.D.C. 1981) 526 F.Supp.494	14
<i>In re Consumer Privacy Cases</i> 175 Cal. App. 4th 545, 556-57 (2009)	16
<i>In re Mego Fin. Corp. Sec. Litig.</i> (9th Cir. 2000) 213 F.3d 454, 463	7

1	<i>In re Microsoft I-V Cases</i>	
2	(2006) 135 Cal. App. 4th 706.....	6
3	<i>In re Omnivision Technologies, Inc.</i>	
4	(N.D. Cal. 2008) 559 F.Supp.2d 1036,1043	11
5	<i>In re Washington Public Power Supply System Securities Litigation</i>	
6	(9th Cir. 1994) 19 F.3d 1291, 1299.	12
7	<i>Jordan v. California Dep't of Motor Vehicles</i>	
8	(2002) 100 Cal.App.4th 431, 446	13
9	<i>Kern River Public Access Committee v. City of Bakersfield</i>	
10	(1985) 170 Cal. App. 3d 1205.....	16
11	<i>Ketchum v. Moses</i>	
12	24 Cal. 4th 1122, 1132 (2001)	7
13	<i>Kullar v. Foot Locker Retail, Inc.</i>	
14	(2008) 168 Cal. App. 4th 116.....	6,8
15	<i>Laffitte v. Robert Half Intern. Inc.</i>	
16	(2016) 1 Cal.5th 480, 503	6,7,14
17	<i>Lealao v. Beneficial California, Inc.</i>	
18	(2000) 82 Cal.App.4th 51	15
19	<i>PLCM Group v. Drexler</i>	
20	22 Cal. 4th 1084, 1096-97 (2000)	16
21	<i>Rabin v. Concord Assets Group, Inc.</i>	
22	(S.D.N.Y. 1991) Fed. Sec. L. Rep. (CCH) par. 96471 at 92,091.....	16
23	<i>Rievman v. Burlington Northern Railroad Co.</i>	
24	(S.D.N.Y. 1987) 118 F.R.D. 29,35.....	16
25	<i>Ross v. A.H. Robins</i>	
26	(S.D.N.Y. 1988) 700 F. Supp. 682, 684	11
27	<i>Sternwest Com. v. Ash</i>	
28	(1986) 183 Cal. App. 3d 74.....	16
29	<i>Syers Properties III, Inc. v. Rankin</i>	
30	(2014) 236 Cal.App.4th 691, 702.....	16
31	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
32	(2012) 203 Cal.App.4th 1112, 1135	9,10
33	<i>Winslow v. Harold G. Ferguson Corp.</i>	
34	(1944) 25 Cal.2d 274, 284.....	15
35	STATUTES, RULES AND REGULATIONS	
36	Cal. Code Civ. Proc. § 384	4

1 Cal. Lab. Code § 1194(a).....17

2 Cal. Lab. Code § 2699(g)(1).....17

3 **OTHER**

4 1 Newberg §14.03.....14

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

I. SUMMARY OF MOTION

This motion seeks final approval of a “Wage and Hour” representative (*i.e.*, “PAGA”) and Class Action settlement. Plaintiff DAVID ALEGRIA and MAURO MORENO (“Plaintiffs”) claim on behalf of a class of nonexempt employees who worked for the named Defendant during the operative class period, set forth herein.

Following approximately **31 months** of formal litigation, multiple depositions, a full-day of Mediation, full briefing of a Motion for Class Certification, and extensive arms length negotiations, the parties agreed to the terms of a class and PAGA action settlement. Following the distribution of the approved Notice to the class, the proposed final settlement figures are as follows:

Final size of potential class:	33 Participating Class Members
Objections to Settlement:	Zero (0)
Opt-Outs:	Zero (0%)
Gross settlement amount (“GSA”):	\$250,000.00
Claims administration:	\$3,671.60
Costs/expenses of litigation:	\$14,439.95
LWDA payment:	\$11,250.00 (75 % Share of \$15,000 allocation)
Attorneys’ fees:	\$83,333.00 (1/3 of total)
Class representative incentives:	\$15,000.00 (\$7,500.00 each)

There have been **no (zero) objections** to this proposed settlement. The *average* gross payment to each participating Class Member based on the above figures is **\$3,592.59**, which does not account for the fact that certain class members will receive more or less than an “average” share, depending on the length of time each worked for Defendants during the class period. (Please see the declaration of Settlement Administrator Jeffrey Johnson at ¶15).

II. UPDATED FACTUAL AND PROCEDURAL HISTORY

Should the Court deem it relevant, a much more detailed procedural history of the case, and summary of all claims, was already set forth in Plaintiff’s original Motion for Preliminary Approval. (ROA #50). The Court **granted** Preliminary Approval of the parties’ original settlement on May 20,

2026. (ROA #55). The signed preliminary approval order was entered May 20, 2026. (ROA # 55).

As was detailed more fully in the prior motion, after over two years of active litigation, the parties attended a highly adversarial mediation, presided over by a well respected “Wage and Hour” mediator (the honorable Herbert Hoffman). (ROA #50, § II). The case did not settle at mediation. However, the parties also continued settlement discussions directly between counsel, and at times, facilitated through the Mediator. *Id.* Through these discussions, the Parties agreed on key terms of a settlement that would globally resolve all class and representative “Wage and Hour” claims asserted in the operative complaint in this Action, which is the forthcoming SAC. Plaintiff Moreno has been added in the forthcoming Second Amended Complaint, but no additional claims are asserted. (See ROA #53 Proof of Service, Stipulation).

Most importantly for purposes of final approval, zero employees (out of 33 individuals) objected, and zero employees have “opted out.” (Johnson decl. ¶¶ 10-12). Thus, the class overwhelmingly supports the proposed settlement.

The parties’ Joint Stipulation of Class and PAGA Action Settlement and Release (hereinafter the “Agreement”) contains the terms of the class action settlement and is already on file with the Court. (ROA #48: **Exhibit A** thereto). For ease of reference, the Agreement will be cited to herein again as Agreement or Exhibit A)¹.

III. SETTLEMENT TERMS

The Agreement includes the following key terms:

1. Contingent Nature of the Settlement

The parties entered into the Agreement exclusively for the purpose of resolving the action and facilitating the negotiated settlement. Should the Court, for any reason, not finally approve the Agreement, or if the Agreement is terminated for any reason, the Agreement will be null and void and this action will revert to its status with respect to any and all matters as they existed prior to the parties signing the Agreement. (**Ex. A** at ¶64).

¹ This Memorandum incorporates by reference the definitions in the Agreement and the terms used herein are intended to have the same meaning as set forth in the Agreement.

1 **2. Description of the Settlement Classes**

2 Solely for the purposes of the Agreement, the parties have agreed that the term
3 “Class Member” is defined as

4 all persons who worked for Defendant in the State of California as a nonexempt,
5 hourly-paid employee at any time during the Class Period. (**Ex. A** at ¶5).

6 “Class Period” is defined as the period from February 22, 2019 through July 14, 2025. (**Ex.**
7 **A** at ¶7). Class Notices were sent to 33 individuals, as determined by Defendants’ employment
8 records. (Johnson decl. ¶ 6). Zero (0) Class Members opted out of the litigation. (Johnson decl. ¶
9 10). **No (zero)** Class Members have objected to the proposed settlement. (Johnson decl. ¶11).
10 Following the Notice, there are a total of 33 class members who will all receive a share of the
11 settlement proceeds. (Johnson decl. ¶ 12).

12 **3. Appointment of Settlement Claims Administrator**

13 CAC Services Group, LLC was used as the “Settlement Administrator” for purposes of
14 providing the Notice (and its instructions) to Settlement Class Members, issuing all payments
15 pursuant to the Agreement, and to track all opt-outs and objections to the settlement.

16 As detailed in the accompanying declaration, CAC successfully completed all steps of the
17 Notice process and is prepared to distribute payments pursuant to this Court’s Final Orders. (See
18 Johnson decl. ¶¶ 4-14).

19 **4. Scope of the Release**

20 For purposes of the Agreement, Class Members release all claims that are either or both: (1)
21 alleged in the forthcoming Second Amended Complaint (“SAC”); or (2) which relate to or arise out
22 of the allegations and claims asserted in the SAC and could have been alleged in the SAC relating
23 in any way to violations of the wage and hour provisions of the California Labor Code or the
24 California Wage Orders, or any wage and hour provisions of California law. The precise release
25 language is reflected in **Exhibit A** at ¶¶ 52-53.

26 ///

27 ///

1 **5. Cash Payment and Allocation**

2 The Agreement provides for an automatic Individual Settlement Payment to the members
3 of the class who do not submit valid requests for exclusion. The settlement is non-reversionary, in
4 that all of the Net Settlement Amount, after all costs and fees are deducted, will be paid to the
5 participating Class Members. Employer payroll taxes are also deducted prior to this calculation. (**Ex.**
6 **A** at ¶33).

7 Based on the final counts after the notice period, participating Class Members will be entitled
8 to an average share of approximately **\$3,592.59**. (Johnson decl. ¶ 15). The actual amounts received
9 vary based on length of employment during the class period. The highest estimated payout is
10 **\$10,914.42** and the lowest amount is **\$32.68**. (Johnson decl. ¶ 15).

11 The settlement checks returned as undeliverable and those settlement checks remaining
12 un-cashed for more than one hundred eight (180) calendar days after issuance shall be canceled by
13 the Settlement Administrator, and the funds associated with such cancelled checks shall be
14 transmitted by the Settlement Administrator pursuant to governing law to the California State
15 Controller Unclaimed Property fund to be held there for the benefit of such Class Members under
16 California’s escheatment laws. (**Ex. A** at ¶57). The Parties agree this disposition results in no
17 “unpaid residue” under California Civil Procedure Code § 384(b), as the entire NSF shall be paid
18 to Participating Class Members, whether or not their Individual Settlement Payment checks are
19 cashed. (*Id.*)

20 **6. Contingent Costs**

21 The Agreement provides for Eighty-Three Thousand Three Hundred Thirty-Three Dollars
22 (**\$83,333.00**) in Attorneys’ Fees, which is one-third (1/3%) of the total Settlement, and up to Twenty
23 Thousand (\$20,000.00) in litigation costs. (*See Exhibit A* at ¶34). The actual costs between the
24 Plaintiffs’ totals **\$14,439.95**. (Yaeckel decl. ¶ 29).

25 For costs incurred in administrating the Settlement, the Agreement provides for an estimated
26 Two Thousand Eight Hundred Seventy-Four Dollars and Ten Cents (\$2,874.10), or less. (*See*
27
28

1 **Exhibit A** at ¶ 36). Defendants will pay the actual costs, quoted at **\$3,671.60**, out of the settlement
2 amount to the Settlement Administrator. (Johnson decl. ¶ 17).

3 Defendants also agree to allocate Fifteen Thousand Dollars (\$15,000.00) to be allocated for
4 Plaintiff's PAGA claims with 75% of the amount, or Eleven Thousand Two Hundred Fifty Dollars
5 (\$11,250.00) being paid to the LWDA, and 25%, or \$3,750.00, being distributed amongst the PAGA
6 Members. (See **Exhibit A** at ¶37).

7 Defendants also agree to pay to Plaintiffs Alegria and Moreno Seven Thousand Five Hundred
8 Dollars (**\$7,500.00**) each, which represents a Class Representative Enhancement Payment in
9 consideration for their services as Class Representatives. (See **Exhibit A** at ¶35). The class was
10 notified of the payments to Plaintiffs and did not object. (See Johnson decl.: **Ex. 1** at § III). The
11 enhancement awards were decided pursuant to good faith negotiations and is intended to recognize
12 that it was the class representatives who initiated the lawsuit, initiated the PAGA claims, provided
13 critical documents and witnesses to his attorneys, and worked with their attorneys to propound and
14 prepare written discovery, all in an effort to obtain moneys allegedly owed not only to themselves,
15 but to all other employees. For further justification of the enhancements, please see the attached
16 declaration of Mr. Alegria and Mr. Moreno.

17 **IV. CONTROLLING LAW**

18 The following facts and law support this undisputed request.

19 **A. FINAL APPROVAL OF CLASS ACTION SETTLEMENTS**

20 The trial court has broad discretion to determine whether a class action settlement is fair and
21 reasonable. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.

22 Fairness is presumed where (1) the settlement is reached through arm's-length bargaining;
23 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
24 counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Chaves v.*
25 *Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 52; *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794,
26 1802. But, even where it appears the settlement is fair, the court must still determine whether the
27 settlement should be approved after considering "the strengths and weaknesses of the claims and
28

1 risks of the particular litigation.” *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116,
2 129. It considers: (i) the strength of the plaintiff’s case; (ii) the risks, expense, complexity and likely
3 duration of further litigation; (iii) the risk of maintaining class action status throughout the trial; (iv)
4 the amount offered in settlement; (v) the extent of discovery completed; (vi) the stage of the
5 proceedings; (vii) the experience and views of counsel; (viii) the presence of a governmental
6 participant; and (ix) any reaction of putative class members. *Dunk, supra*, 48 Cal.App.4th, at 1800-
7 1801; *In re Microsoft, supra*, 135 Cal.App.4th, at 723.

8 The court should approve a class action settlement when the settlement is fair and falls
9 “within the range of reasonableness.” *Hernandez v. Vitamin Shoppe*, (2009) 174 Cal.App.4th 1441,
10 1446.

11 **B. ATTORNEYS’ FEES**

12 The California Supreme Court has recently determined that the percentage of the benefit,
13 (“percentage method”) is proper for determining a reasonable attorney fee award in an employment
14 class action case. *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480.

15 The California Supreme Court’s rationale was as follows:

16 we clarify today that use of the percentage method to calculate a fee in a common
17 fund case, where the award serves to spread the attorney fee among all the
18 beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join
19 the overwhelming majority of federal and state courts in holding that when class
20 action litigation establishes a monetary fund for the benefit of the class members, and
21 the trial court in its equitable powers awards class counsel a fee out of that fund, the
22 court may determine the amount of a reasonable fee by choosing an appropriate
23 percentage of the fund created. The *recognized advantages* of the percentage
24 method—including relative ease of calculation, alignment of incentives between
counsel and the class, a better approximation of market conditions in a contingency
case, and the encouragement it provides counsel to seek an early settlement and
avoid unnecessarily prolonging the litigation (See pt. I, ante; *Lealao, supra*, 82
Cal.App.4th at pp. 48–49, 97 Cal.Rptr.2d 797; *Rawlings v. Prudential–Bache
Properties, Inc., supra*, 9 F.3d at p. 516)—**convince us the percentage method is
a valuable tool that should not be denied our trial courts.** *Laffitte v. Robert Half
Intern. Inc.* (2016) 1 Cal.5th 480, 503 (emphasis added).

25 The Court also determined that while permissible, a lode-star “cross check” of the percentage
26 method was **not** required of California’s trial courts. *Id.* at 506.

1 In fact the *Laffitte* Court further noted how advocating a lodestar, over a percentage of the
2 recovery, creates perverse litigation incentives:

3 Critics of the lodestar method note, for example, the difficulty in applying the method and
4 cite the **undesirable incentives created by that approach**—i.e., a financial **incentive to**
5 **extend the litigation so that the attorneys can accrue additional hours** (and thus,
6 additional fees). Moreover, some courts and commentators have criticized the lodestar
method because **it gives counsel less of an incentive to maximize the recovery** for the
class.
Id. at 494 (emphasis added).

7 Finally, "regardless whether the percentage method or the lodestar method is used, **fee**
8 **awards in class actions average around one-third of the recovery.**" *Chavez v. Netflix, Inc.*,
9 (2008) 162 Cal.App.4th 43, 66, n.11 (2008); See e.g., *In re Mego Fin. Corp. Sec. Litig.* (9th Cir.
10 2000) 213 F.3d 454, 463 (upholding award of 33.3 percent of the settlement fund).

11 In considering the reasonableness of the fees requested under the percentage method,
12 California courts may also consider the following factors: **(1)** the results achieved on behalf of the
13 Class; **(2)** the response of the Class to the settlement, including a lack of objections to the settlement
14 terms, and particularly to the fee award; **(3)** counsel's preclusion from taking other work and the
15 contingent nature of the fee award; and **(4)** counsel's experience, reputation, and ability. *See Laffitte*,
16 1 Cal. 5th at 504-05 (holding that the court may consider various factors in determining the
17 reasonableness of the fees); see also, *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (applying
18 these factors in considering a fee award under the lodestar-multiplier method).

19 **C. CLASS REPRESENTATIVE ENHANCEMENTS**

20 An incentive award may be appropriate to induce someone to serve as a class representative.

21 In determining whether to make an incentive award, the court may consider (1) the risk, both
22 financial and otherwise, the class representative faced in bringing the suit; (2) the notoriety and
23 personal difficulties encountered by the class representative; (3) the amount of time and effort spent
24 by the class representative; (4) the duration of the litigation; and (5) the personal benefit received
25 by the class representative as a result of the litigation. *Golba v. Dick's Sporting Goods, Inc.* (2015)
26 238 Cal.App.4th 1251, 1270 citing *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380,
27 1394-1395.
28

1 Additional factors to consider include:

2 “the actions the plaintiff has taken to protect the interests of the class, the degree to which
3 the class has benefitted from those actions, and the amount of time and effort the plaintiff
4 expended in pursuing the litigation.’ Federal district courts have identified other factors as
5 well, including ‘the risk to the class representative in commencing suit, both financial and
6 otherwise,’ ‘the notoriety and personal difficulties encountered by the class representative,’
7 the duration of the litigation, and ‘the personal benefit (or lack thereof) enjoyed by the class
8 representative as a result of the litigation.’”

9 *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 804.

10 **V. ARGUMENT**

11 **A. THE PROPOSED SETTLEMENT IS MADE IN GOOD FAITH**

12 As specifically set forth below, the settlement meets all requirements for Court approval.

13 **1. Strength of Plaintiffs’ Case and Investigation and Discovery**

14 The most important factor courts consider when evaluating the fairness of the class action
15 settlement is the strength of the plaintiff’s case balanced against the amount offered in settlement.
16 *Kullar, supra*, 168 Cal.App.4th at 130.

17 This is a class and representative action, with Plaintiff’s claims premised on Labor Code
18 violations, established (in part) from Defendants’ uniform policies. *Brinker Rest. v. Superior Court*,
19 (2012) 53 Cal. 4th 1004, 1051 (holding that, where a company’s uniform policy prohibits
20 off-the-clock work, certification of claims for such off-the-clock work is inappropriate, especially
21 where the court is merely “presented with anecdotal evidence of a handful of individual instances
22 in which employees worked off the clock.”) Thus, Plaintiffs’ counsels’ approach was to investigate
23 Defendants’ uniform employment policies by, *inter alia*, scrutinizing putative class members’ time
24 and wage records, as well as Defendants’ written meal and rest period policies.

25 As detailed more thoroughly in the preliminary approval motion, extensive (and often highly
26 contested) discovery occurred, followed by additional informal exchanges prior to mediation. (See
27 ROA # 50 at § II).

28 Plaintiffs obtained verified copies of Defendants’ uniform time keeping, employee
compensation, Meal Period, Rest Period, and reimbursement policies. In addition to Plaintiff’s time
and wage records, Defendants also produced a large electronic sampling of class member’s records.
Including “outside” documentation, Counsel reviewed over hundreds of pages of electronic

documents. Through this review, Plaintiff's counsel was able to analyze and verify the following: the uniformity of Defendants' "timekeeping" and compensation practices and the average net effect it had on Defendants' nonexempt employees; the format and content of Defendants' itemized wage statements; the average rate of pay for Defendants' nonexempt employees; and the average number of apparent meal period violations per employee based on multiple sets of timekeeping data.

From this data, a detailed valuation of all claims was performed, and was presented to this Court at the preliminary approval stage. (See ROA # 50 at § IV, and the declaration of Eric K. Yaeckel in Support of Preliminary Approval).

While Plaintiffs maintained the claims were all viable, Plaintiffs (and counsel) recognize there were substantial risks to proceeding on behalf of a class and representative group. Defendants presented several potentially valid defenses to certification, liability and mitigation of damages. (Yaeckel Decl. ¶11).

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

Plaintiffs' Counsel's effectiveness in prosecuting this case has translated into tangible monetary benefits for the Settlement Class Members in the following respects: **(a)** a guaranteed favorable result; **(b)** guaranteed monetary recovery over a reasonably short period of time, as opposed to possibly waiting additional years for a potentially worse result; and **(c)** significant savings in attorney's fees and costs, which would have greatly increased had the case progressed through trial and possible appeals.

Given the existence of viable defenses, for the vast majority of the class claims, it was unlikely that all class claims would have been certified and brought to trial. Therefore, this class action settlement is a superior result for both parties. In exchange for a full release, Class members are able to recover substantial monetary amounts *now*. Defendant is also able to "buy its peace," and avoid the costs of defending all future claims stemming from the same wage and hour issues in this case.

Regarding Plaintiffs' PAGA representative claims, there is also a substantial risk that Plaintiffs would either fail to obtain a favorable judgment on one or more of these claims, or that

1 a favorable award on one or more PAGA claims can be reduced. *See Thurman v. Bayshore Transit*
2 *Mgmt., Inc.*, (2012) 203 Cal.App.4th 1112, 1135 (holding the Superior Court may “mitigate” PAGA
3 penalties, even after a finding of liability.)

4 **3. The Experience and Views of Counsel**

5 Class Counsel has considerable experience in wage and hour and class action litigation. Mr.
6 Sullivan (who is currently and temporarily unavailable, due to a medical issue), estimates that,
7 throughout the course of his 31-year career, he has acted as Lead Plaintiffs' counsel on "Wage and
8 Hour" Class/Representative actions that have collected more than \$300 million for employees and/or
9 the State of California, either through judgment following trial, or via negotiated settlement.
10 (Yaeckel decl. ¶ 3).

11 Mr. Eric Yaeckel has over 14 years of experience as an attorney who is primarily engaged
12 in prosecuting class and representative actions. Mr. Yaeckel is one of the attorneys of record in a
13 matter very recently (and favorably) decided before the California Supreme Court titled *Donohue*
14 *v. AMN Services, LLC*, 11 Cal.5th 58 (2021). The *Donohue* matter is a certified class and PAGA
15 action. Mr. Yaeckel also has specific trial experience in several PAGA representative action matters.
16 (Yaeckel decl. ¶¶4-5).

17 Mr. Cody Archer has over 1 year of experience as an attorney who is primarily engaged in
18 prosecuting class and representative actions. He has been the “lead associate” on numerous class
19 action cases that have settled. (Yaeckel decl. ¶ 4).

20 Lead co-counsel Capstone Law APC was founded in 2012 and is a leading firm in
21 employment class and PAGA actions. (Perez decl. ¶¶2-8). The firm has handled numerous large and
22 extensively litigated class action cases, and has repeatedly been found “adequate” to act as class
23 counsel by numerous California State and District Courts. (Perez decl. ¶¶9-10).

24 Based on a detailed analysis of all the claims and the risks involved in continuing litigation,
25 class counsel each submit the **\$250,000.00** Gross Settlement Fund represented a fair, and more than
26 reasonable, settlement. (Yaeckel decl. ¶11).

27 ///

1 **4. Presence of a Governmental Actor**

2 Although the State is not directly involved in this action, Plaintiff "stands in the shoes" of
3 the Labor and Workforce Development Agency ("LWDA") by bringing a PAGA action.
4 Consideration has been made to compensate to Labor Workforce Development Agency ("LWDA")
5 in the amount of \$11,250.00 (which is the LWDA's 75% share of a \$15,000 allocation).

6 The LWDA was notified and declined to prosecute the claims itself. Counsel for the parties
7 believe this is a fair, reasonable, and adequate allocation. (Yaeckel decl. ¶¶ 12, 14). The LWDA was
8 also served with copies of the Settlement and Preliminary Approval Motion and has not objected
9 or responded to date. (*Id.*) They have also been served with the notice of this motion and all supporting
10 documents. (See concurrently filed Proof of Service). Counsel will submit a declaration updating
11 the Court should the LWDA provide any response.

12 **5. Reaction of the Class Members to the Proposed Settlement**

13 A total of 33 members of the settlement class were notified and zero (0) members requested
14 exclusion and opted out of the class. (Johnson decl. ¶¶ 6, 10).

15 Perhaps most importantly, **there have been No (Zero) objections to the terms of the**
16 **proposed settlement.** (Johnson decl. ¶ 11).

17 "By any standard, the lack of objection of the Class Members favors approval of the
18 Settlement." *In re Omnivision Technologies, Inc.*, (N.D. Cal. 2008) 559 F.Supp.2d 1036,1043; see
19 also *Ross v. A.H. Robins*, (S.D.N.Y. 1988) 700 F. Supp. 682, 684 ["The absence of objectants may
20 itself be taken as evidencing the fairness of a settlement."]

21 **B. THE REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE**

22 Plaintiffs will seek, and Defendants will not oppose, a payment of Eighty-Three Thousand
23 Three Hundred Thirty-Three Dollars (**\$83,333.00**) in Attorneys' Fees, which is one-third (1/3%) of
24 the total Settlement.

25 The agreement also calls for up to Twenty Thousand Dollars (\$20,000.00) in litigation costs.
26 However, Plaintiffs will be seeking less in the total amount of **\$14,439.95** (\$13,873.39 for SYLG
27 and \$566.56 for Capstone Law APC). (Yaeckel decl. ¶ 29; Perez decl. ¶15).

As set forth below, the requested attorney's fees are inherently reasonable, on the basis of both a percentage of the recovery and a lodestar method, given the results obtained for the class. The following factors establish the reasonableness of the attorney's fees requested.

1. The Contingent Nature of the Fee Agreement, and Inherent Risk Therein, Supports Awarding a Percentage of the Recovery

In the instant matter, Plaintiff's Counsel was retained on a contingency basis. (Yaeckel decl. ¶15). A percentage fee of 35 % (thirty-five percent) was freely negotiated. (*Id.*) As part of the Agreement, Counsel was required to continue the prosecution of the matter regardless of the outcome of the preliminary motions. (*Id.*) Here, however, Plaintiff's Counsel has agreed to a 33 & 1/3 % share of the recovery in order to maximize the recovery on behalf of the class. (*Id.*)

There is an **established practice** in the private legal market to reward attorneys for taking the risk of non-payment by paying them a **premium over their normal hourly rates** for winning contingency cases. *In re Washington Public Power Supply System Securities Litigation* (9th Cir. 1994) 19 F.3d 1291, 1299. If attorneys' efforts create a benefit for others in addition to their own client, the court is empowered to award fees from that fund. *Boeing v. Van Gemert* (1980) 444 U.S. 472, 478.

The rationale for fee enhancement in contingency cases has been explained as follows:

'A contingent fee must be higher than a fee for the same legal services paid as they are performed. **The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.**' (Prosner, *Economic Analysis of Law* (4th ed.1992) pp. 534, 567.) '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.' (Leubsdorf, *The Contingency Factor in Attorney Fee Awards* (1981) 90 Yale L.J. 473, 480; see also Rules Prof. Conduct, rule 4-200(B)(9) [recognizing the contingent nature of attorney representation is an appropriate component in considering whether a fee is reasonable]; ABA Model Code Prof. Responsibility, DR 2-106(B)(8) [same]; ABA Model Rules Prof. Conduct, rule 1.5(a)(8).] **Such fee enhancements are intended to compensate for the risk of loss generally in contingency cases as a class.**

Beasley v. Wells Fargo Bank (1991) 235 Cal.App.3d 1407, 1419 (disapproved on other grounds.)

The percentage of the fund approach also sets expectations and incentivizes counsel in taking on the risk of a contingency case:

1 The bases of the equitable rule which permits surcharging a common fund with the expenses
2 of its protection or recovery, including counsel fees, appear to be these: fairness to the
3 successful litigant, who might otherwise receive no benefit because his recovery might be
4 consumed by the expenses; correlative prevention of an unfair advantage to the others who
5 are entitled to share in the fund and who should bear their share of the burden of its recovery;
6 **encouragement of the attorney for the successful litigant, who will be more willing to**
7 **undertake and diligently prosecute proper litigation for the protection or recovery of**
8 **the fund if he is assured that he will be promptly and directly compensated should his**
9 **efforts be successful.**

10 *Jordan v. California Dep't of Motor Vehicles* (2002) 100 Cal.App.4th 431, 446 (with emphasis
11 added) citing *Estate of Stauffer* (1959) 53 Cal.2d 124, 132.)

12 As a result, the percentage of the recovery (routinely approved in California at 33 & 1/3%),
13 properly incentivizes and awards counsel for diligently pursuing this matter in the face of numerous
14 obstacles to both certification, and liability.

15 **2. The Continuing Obligation to Devote Time and Effort to the Litigation**

16 Since the tentative agreement, my office has had to devote considerable time to maintain the
17 litigation, achieve Court approval for the proposed settlement, and assist the proposed Class
18 Members with questions about the Class Notice, Potential Release and all available options.
19 Moreover, based on my experience acting as class counsel, I also estimate at least another 10 hours
20 by my office will be devoted assisting Class Members on questions and issues regarding the
21 settlement, meeting with Class Members (including on any late submissions), and preparing for and
22 attending the Final Approval hearing in this matter. (Yaeckel decl. ¶16).

23 **3. The Extent to which the Litigation Precluded Other Employment**

24 Counsel was precluded from accepting other employment and clients due to the necessity
25 of maintaining the prosecution of the instant matter and also precluded them from bringing clients
26 to the firm. (Yaeckel decl. ¶ 17).

27 **4. The Experience, Reputation, and Ability of the Attorneys who Performed the** 28 **Services, and the Skill They Displayed in Litigation**

As set forth above, Plaintiffs' counsel all have extensive experience, successfully prosecuting
class and representative actions. (Yaeckel decl. ¶¶3-5; Perez decl. ¶¶9-10). Plaintiffs' counsel are
the attorneys of record in a matter very recently (and favorably) decided before the California
Supreme Court titled *Donohue v. AMN Services, LLC*, (2021) 11 Cal.5th 58. The *Donohue* matter

1 is a certified class and PAGA action. (Yaeckel decl. ¶ 5). Plaintiffs' counsel are currently lead
2 counsel on approximately 30 employment "wage and hour" claims with class action, or
3 representative action allegations. (Yaeckel decl. ¶6).

4 Plaintiffs' counsel has recent (and successful) Trial experience in "Wage and Hour" cases.
5 In a recent successful PAGA trial, before the Hon. Katherine Bacal of the San Diego Superior Court,
6 Plaintiffs' counsel was awarded their full requested attorneys fees and the hourly rates (which are
7 similar to the fees/rates billed here) billed were all approved. See *Carrington v. Starbucks Corp.* San
8 Diego Superior Court, Case No. 37-2014-00018637-CU-OE-CTL and published appellate opinion
9 at 30 Cal.App.5th 504. (Yaeckel decl. ¶7).

10 Based on said experience, it is the opinion of counsel that this settlement represents a fair
11 and adequate payment. (Yaeckel decl. ¶¶8-9).

12 **5. The Amount Involved and the Results Obtained on Behalf of the Class**

13 This is not a "coupon" class action case. (Yaeckel decl. ¶18). The Class is set to receive
14 significant monetary benefits they would not have received if Class Counsel did not act. (*Id.*)
15 Participating members of the Class will receive an average of **\$3,592.59** with some class members
16 receiving as much as **\$10,914.42**. (Johnson decl. ¶ 16).

17 **6. A Percentage of the Common Fund Award is Proper**

18 The controlling law on this issue is set forth above in Section IV(B).

19 Plaintiffs' counsel submits that the request for 33 & 1/3 % in attorneys fees from the
20 "common fund" settlement is proper. *Laffitte v. Robert Half Intern. Inc.*, (2016) 1 Cal.5th 480, 503,
21 506. Historically, courts have awarded fees as high as fifty percent (50%) of the common fund,
22 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust*
23 *Litig.* (D.D.C. 1981) 526 F.Supp.494 (awarding attorneys' fees in the amount of 45% of the \$7.3
24 million settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979)
25 480 F.Supp. 1195 (awarding approximately 53% of the settlement fund as attorney fees).

26 California Courts routinely approve class action attorneys' fee awards "averag[ing] around
27 one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court
28

found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions).

Additionally, 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.*, 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.” *Winslow v. Harold G. Ferguson Corp.* (1944) 25 Cal.2d 274, 284. 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, supra*, 82 Cal.App.4th at p. 51; *see also Boeing, supra*, 444 U.S. at p. 478 (“a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole”).

7. The Lodestar Cross-Check

If deemed necessary, a “lodestar cross-check” of the settlement also confirms the propriety of the request.

As set forth in the attached Declaration of Eric K. Yaeckel and Raul Perez, the actual lodestar attorney's fees incurred (to date) are estimated to amount to be approximately **\$130,162.50** between all Plaintiff's counsel. (\$86,500.00 SYLG + \$43,662.50 Capstone Law APC).

Please Note: For a detailed breakdown of the tasks performed, rates of pay and hours expended please see the declaration of counsel. (Yaeckel decl. ¶¶19-20; Perez decl. ¶¶11-14).

Based on past experience, counsel estimates the associates will incur an additional 10 hours (at a minimum) hours in assisting Class Members on questions and issues regarding the settlement, meeting with Class Members (including those who file "late" submissions), and preparing for and attending the Final Approval hearing in this matter.

8. The Reasonableness of the Hourly Rates

In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees by multiplying the time reasonably spent by plaintiffs' counsel on the case by a ***reasonable hourly***

1 **rate.** *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009). To determine whether
2 the requested rate is reasonable, courts look to the prevailing rate for similar work in the pertinent
3 geographic region. *PLCM Group v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000) (using prevailing
4 hourly rate in community for comparable legal services even though party used in-house counsel).

5 A trial court has discretion to use the “Laffey Matrix” when it comes to establishing
6 attorneys’ reasonable hourly rates in California State Courts. *See e.g. Syers Properties III, Inc. v.*
7 *Rankin*, (2014) 236 Cal.App.4th 691, 702.

8 The referenced "Laffey" chart states that for the time periods in this case, for an attorney with
9 “20+” years experience, such as Mr. Sullivan, the matrix states a reasonable fee is between
10 **\$1,227–\$997** per hour. Mr. Sullivan has over **31** years of experience and bills at **\$800** per hour.
11 **Please Note:** While \$800 an hour may seem like a high figure at first glance, multiple Court’s
12 (including all San Diego Superior Court Judges) have accepted this figure for Mr. Sullivan.
13 Moreover, this rate is justified given that “wage and hour” Class and/or Representative Action cases
14 very rarely go to trial. Mr. Sullivan is one of the few attorneys who have (successfully) tried
15 numerous of these types of cases. He has also successfully argued in front of the California Supreme
16 Court in a Class and Representative action that is frequently cited in “wage and hour” litigation
17 involving Meal Period claims. *Donohue v. AMN Services, LLC*, (2021) 11 Cal.5th 58. (Yaeckel decl.
18 ¶ 23).

19 For an attorney with **11-19** years experience, the matrix states a reasonable fee is between
20 **\$1,019- \$829** per hour. Mr. Yaeckel has over **14** years experience working on class action litigation
21 and only bills at the rate of **\$700** per hour. (Yaeckel decl. ¶ 23). However, for this case only, Mr.
22 Yaeckel reduced his rate to **\$600** per hour. (*Id.*)

23 For an attorney with **1-3** years experience, the matrix states a reasonable fee is between **\$508**
24 **-\$437** per hour. The associate Mr. Archer, who was working on this matter has over one year
25 experience and billed at the rate of **\$475** per hour. (Yaeckel decl. ¶ 24). However, for this case only,
26 Mr. Archer reduced his rate to **\$400** per hour. (*Id.*)

27 Moreover, the rates of co-counsel (Capstone Law APC), ranging between \$1,050 for the
28

1 partner and \$625-\$800 for senior counsel and associates, are all within the market range of hourly
2 rates charged by attorneys of comparable skill and experience working on similar matters. (Perez
3 decl. ¶¶11-14).

4 Accordingly, Plaintiffs' Counsel's hourly rates are comparable to, or less than, those charged
5 by other class action plaintiffs' counsel and the firms defending class actions, and have been
6 approved by numerous federal and state courts.

7 **9. No Lodestar "Multiplier" is Necessary**

8 Bluntly, **no** multiplier is requested, or necessary, as the fees requested are **less** than the actual
9 fees incurred. Specifically, Plaintiff's Counsel has incurred approximately **\$130,162.50** in actual
10 fees. However, no multiplier is necessary as Plaintiff is only requesting **\$83,333.00** in fees.

11 Additionally, the settlement provides the class with a substantial monetary amount and the
12 class strongly supports the fairness of the settlement, even after being notified of the requested
13 attorneys' fee award (**0 opt-outs, and 0 objections**). In the event the Court deems a lodestar analysis
14 is necessary it will confirm that Plaintiff's fees are reasonable.

15 **10. The Amount of Costs**

16 Plaintiff's Counsel are also entitled to reimbursement of their litigation costs. Cal. Lab. Code
17 §§ 1194(a), 2699(g)(1).

18 Class Counsel has expended approximately **\$14,439.95** in costs, including filing fees, travel,
19 mediation, copying and document preparation charges, deposition fees, investigative fees, and
20 delivery/service fees. (Yaeckel decl. ¶28; Perez decl. ¶15). Defendant agreed not to oppose an
21 amount of up to \$20,000.00 in costs. Accordingly, Plaintiffs' counsel therefore seeks approval of
22 the actual costs of **\$14,439.95** (\$13,873.39 SYLG and \$566.56 to Capstone Law APC). (Yaeckel
23 decl. ¶29).

24 **C. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT IS**
25 **REASONABLE**

26 Plaintiffs Alegria and Moreno each request an enhancement award of **\$7,500.00** for serving
27 as the class representative. Defendants do **not** oppose this request. The class was notified and does
28

1 **not** object.

2 A Plaintiff puts their future employment prospects at risk by becoming a class representative
3 as the fact that they filed a class action lawsuit "is searchable on the internet and may become known
4 to prospective employers when evaluating" the employee as a candidate. *Guippone v. BH S&B*
5 *Holdings, LLC*, 2011 U.S., Dist. LEXIS 126026, *20 (S.D.N.Y. Oct. 28, 2011).

6 Plaintiffs contributed extensive time and resources in the prosecution of this case. Plaintiffs
7 were able to provide information instrumental to the prosecution of this matter including identifying
8 numerous witnesses that could corroborate his claims. Plaintiffs also assisted with reviewing and
9 providing insight on Defendants' documents produced. Plaintiff Moreno also sat for a full day of
10 deposition in this matter. (See Alegria decl. ¶¶3-6; Moreno decl. ¶¶3-7).

11 Moreover, by "sticking their neck out" as a Class Representative in a publicly filed lawsuit,
12 Plaintiffs took a substantial risk that may adversely impact their ability to work in this field in the
13 future. Any company who does a detailed background check, will be able to determine that Plaintiffs
14 asserted legal claims against their former employer. An entire industry exists that allows employers
15 to run extensive background searches on potential employees. Companies who provide these
16 services specifically highlight the fact that their services allows employers to weed out litigious
17 employment candidates. (Yaeckel decl. ¶¶31-33).

18 In addition, Plaintiffs co-workers have all been notified of the lawsuit, so there is a large pool
19 of peers who now know they brought claims against a former employer, which could also jeopardize
20 future positions.

21 Plaintiffs also risked personally owing a large cost award, into the tens of thousands of
22 dollars, based on the costs incurred by Plaintiffs, had the claims been unsuccessful. (Yaeckel decl.
23 ¶ 34).

24 Despite all the risks, Plaintiffs at all times remained committed to securing a monetary
25 recovery on behalf of the entire class. (See Alegria decl. ¶¶7-9; Moreno decl. ¶¶8-10; Yaeckel decl.
26 ¶ 35).

27 Accordingly, Plaintiff asks the Court to approve a class representative enhancement in the
28

1 amount of \$7,500.00 to Mr. Alegria and \$7,500.00 to Mr. Moreno.

2 **VI. CONCLUSION**

3 Based on the foregoing, Plaintiff respectfully requests that this Court grant Plaintiff's Motion
4 consistent with the accompanying proposed Order and Final Judgment.

5 Dated: September 21, 2026

SULLIVAN & YAECKEL LAW GROUP, APC

6
7 *Cody Archer*

8 Eric K. Yaeckel

9 Cody D. Archer

10 Attorneys for Plaintiff DAVID ALEGRIA
11 Individually, and on behalf of other members of the
12 general public similarly situated
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28