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17
18 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
19
20 FOR THE COUNTY OF SAN JOAQUIN

21 HECTOR ESTRADA, individually and on
22 behalf of others similarly situated
23 Plaintiff,

24 vs.

25 GLASSFAB TEMPERING SERVICES INC.;
26 and DOES 1 through 100, inclusive,
27 Defendants.

Case No: STK-CV-UOE-2021-8051

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS
ACTION SETTLEMENT, ATTORNEY
FEE AWARD, COST AWARD, CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENT, AND REPRESENTATIVE
PLAINTIFF ENHANCEMENT
PAYMENT**

Hearing Date: March 13, 2024
Hearing Time: 9 am
Department: 10A

**This case has been assigned to Judge
GEORGE J. ABDALLAH in Department
10A for all purposes including trial**

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1
2 **I. INTRODUCTION**

3 Through Plaintiff's Motion for Final Approval of Class Action Settlement, Plaintiff
4 request court approval of a class action settlement on behalf of 546 Class Members who were
5 formerly employed by Defendant in glass manufacturing. The Parties agree, pursuant to the
6 Settlement Agreement, that all California Labor Code and Business and Professions Code
7 violations claimed by the Class Representative is common to all Class members because they were
8 all similarly situated in terms of type of employment with Defendant, and because they were all
9 subject to the same and uniform employment practices of Defendant. Utilization of the class action
10 process as a means of adjudicating their claims is superior to the filing of individual claims because
11 individual claims would burden the judicial system, and the cost of individual legal representation
12 for each of Defendant's affected employees would severely diminish potential individual recovery.

13 The settlement discussions were conducted at arm's-length with a mediator and involved
14 an informed and detailed analysis of Defendant's potential liability of total exposure in relation to
15 the costs and risks associated with continued litigation (Review of Class members payroll records,
16 time records, employee handbook and all policies that governed class members employment).

17 Discussions between counsel for the Parties, informal discovery, as well as the
18 investigation and evaluation of the allegations in the Complaint by the Parties, have permitted each
19 side to assess the relative merits of the claims and defenses to those claims.

20 The basic terms of the Class Action and PAGA Settlement Agreement ("Settlement
21 Agreement" or "Settlement") provide for the following:

- 22 1. A non-reversionary Gross Settlement Sum of \$345,000 allocated to approximately 546
23 Class Members on a pro rata basis according to the number of weeks each Class Member
24 worked during the Class Period;
- 25 2. An award of up to 35% of the Gross Settlement Sum (currently \$120,750.00) and up to
26 \$17,000 in reimbursement of costs to Plaintiff's Counsel for services rendered as counsel
27 on this matter;
- 28

3. Service Awards of up to \$5,000.00 to Plaintiff Estrada;
4. Settlement Administration fees and costs of up to \$10,499.00; and
5. PAGA Group Size: an estimated **369** individuals, who worked roughly **102** PAGA Pay Periods each (Ladva Decl. ¶ 53);
6. PAGA Period: August 27, 2021 through the date of final approval of the Parties' settlement agreement by the Court. (Ladva Decl. ¶ 53);
7. Withdrawal Clause: If the number of workweeks is more than 10% higher than the estimated 57,760 workweeks as of the date of the Agreement, then Plaintiff may exercise the option to withdraw from the settlement. (Settlement, ¶ 9);
8. Kullar/Munoz Analysis: Plaintiff addresses the claims analysis herein, and in more detail in the Declaration of Ashwin Ladva, at Paragraph 57;
9. No Reversion: The Settlement is a **non-reversionary** settlement (Settlement, ¶ 3.1);
10. No Claim Form: No claim form is required (Settlement, ¶ 3.1);
11. Class Release: The Settlement will release specified wage-and-hour claims for Participating Class Members (those Class Members who do not opt out of the Settlement) as defined by the Operative Complaint (Settlement, ¶ 6.2);
12. PAGA Release: Plaintiff and the LWDA will release the PAGA Claims set forth in this Action, that were identified in the Operative Complaint and Plaintiff's LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 6.3);
13. Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys' fees and costs, service payment to Plaintiff, administration costs, and the PAGA penalty, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of workweeks each Class Member worked for Defendant within the Class Period. The Net Settlement Amount is estimated to be at least \$184,251.00. (Declaration of Ashwin Ladva ("Ladva Decl."), ¶ 58.)
14. Tax Allocation: The amounts distributed to Class Members will be characterized as 10% alleged unpaid wages, 90% to interest and penalties, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶¶ 3.2.4.1, 3.2.5.2.)

- 1 15. Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g.,
2 FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages
3 will be paid separate and apart from the MSA (Settlement, ¶ 3.1);
- 4 16. PAGA Allocation: Payment of \$10,000 for civil penalties pursuant to PAGA. Seventy-five
5 percent (75%) of this payment, or \$7,500 will be paid to the California Labor and
6 Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%), or
7 \$2,500 will be paid to the Net Settlement Amount for distribution to Class Members.
8 (Settlement, ¶ 1.34);
- 9 17. Notice to LWDA: Notice was provided to the LWDA of this Motion. Evidence is attached to
10 the proof of service;
- 11 18. Enhancement/Service Award to Plaintiff: Defendant will not oppose the application for Class
12 Representative Service Payment of up to **\$5,000.00** for Plaintiff, to be paid from the MSA
13 (Settlement, ¶ 3.2.1);
- 14 19. Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.1);
- 15 20. Judgment Notice: Judgment will be posted on the Settlement Administrator's website after
16 entry;
- 17 21. Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with
18 Class Members (Settlement ¶ 13.13).

19 Any portion of the Enhancement Payment not awarded by the Court to Plaintiff shall be
20 added to the Net Settlement Amount for the benefit of Participating Class Members. "Claims
21 Administration Costs" means the costs payable from the Maximum Settlement Amount to the
22 Claims Administrator for administering this Settlement, including, but not limited to, printing,
23 distributing, and tracking documents for this Settlement, calculating estimated amounts per Class
24 Member, tax reporting, distributing the appropriate settlement amounts, and providing necessary
25 reports and declarations, and other duties and responsibilities set forth herein to process this
26 Settlement, and as requested by the Parties.

27 Based on the documents produced, as well as Plaintiff's counsel's own independent
28 investigation and evaluation, Plaintiff's counsel believes that the settlement with Defendant for the

1 consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate, and is
2 in the best interest of the Class Action Members in light of all known facts and circumstances,
3 including the risks of significant delay and uncertainty associated with litigation and various
4 defenses asserted by Defendant.

5 **II. FACTS & PROCEDURAL POSTURE**

6 On August 27, 2021, Plaintiff filed a putative class action against Defendant, entitled *Hector*
7 *Estrada v. GLASSFAB TEMPERING SERVICES INC.*, in SAN JOAQUIN County Superior Court,
8 Case No. STK-CV-UOE-2021-8051 (the “Action”) seeking to represent a class consisting of the
9 “current” and former Class Members of Defendant for claims related to alleged wages, specifically,
10 (1) Violations of the Labor Code sections 1194(a) and 510 (failure to pay overtime wages); (2)
11 Violation of California Labor Code section 226.7 (failure to provide meal and rest breaks); (3)
12 Violation of Labor Code section 226 (failure to provide accurate itemized wage statements); (4)
13 Violation of Labor Code section 510 and 204 (failure to pay all wages and overtime wages); (5)
14 Violation of Labor Code section 201, 202, 203, and 203.1 (waiting time penalties); (6) Unfair
15 Competition in Violation of Cal. Business and Professions Code §17200; (7) Unjust Enrichment; and
16 (8) Declaratory relief behalf of himself and other employees of the Company.

17 On April 15, 2022, Plaintiff filed a Motion to Compel Further Responses to Plaintiff’s First
18 Set of Requests for Production of Documents and First Set of Special Interrogatories. On May 24,
19 2022, Defendants filed his opposition to both motions. The parties stipulated to postpone the date of
20 the hearing until after mediation. The two motions were later withdrawn without prejudice based on
21 the parties preliminary settlement of the case.

22 Plaintiff sent a letter to the Labor and Workforce Development Agency (“LWDA”), pursuant
23 to California Labor Code § 2699.3, providing notice of his intent to seek civil penalties under the
24 Private Attorneys General Act, California Labor Code § 2698, et seq. (“PAGA Letter”). The LWDA
25 did not indicate that it intended to investigate the alleged violations referenced in the letter, and the
26 65-day time period permitted for the LWDA to provide such a notification expired.
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1 The First Amended Complaint was filed on June 7, 2023. The following claims were added
2 in amended complaint included minimum wages, reimbursement of expenses, and a California
3 Private Attorneys' General Act ("PAGA") Claim.

4 Through the discovery process, the Parties estimate that there are approximately 542 Class
5 Members. The Parties agree that the Class Members, include but are not limited to any current or
6 former employees who worked for Defendant.

7 Prior to mediation, Defendant produced to Plaintiff documents relating to payroll records,
8 time records, punch records, number of workweeks in the class, and the number of Class Members
9 no longer employed by Defendant.

10 **III. TERMS OF THE SETTLEMENT**

11 **1. Total Gross Amount, Reimbursement of Costs, Attorneys' Fees, Service** 12 **Award to Plaintiff, and Payment to LWDA for PAGA Claim.**

13 Plaintiff Estrada and Defendant GTS agreed to settle the class claims in exchange for a Gross
14 Settlement Sum of \$345,000. (Ladva Decl., Exhibit 1, Class Action and PAGA Settlement
15 Agreement and Class Notice, § 1.22 & 3.1) The Gross Settlement Sum will be used to make
16 payments for the following: (1) Individual Settlement Payments to Participating Class Members; (2)
17 attorneys' fees to Class Counsel of up to 35 percent of the Gross Settlement Sum; (3) reimbursement
18 of Class Counsel's litigation costs of up to \$17,000; (4) a Service Award to Plaintiff Estrada of up to
19 \$5,000.00; (5) Settlement Administration fees and costs of \$13,000; and (6) a payment to the LWDA
20 of \$7,500 (75% of \$10,000) pursuant to PAGA and the remaining \$2,500 (25% of \$10,000)
21 distributed to aggrieved employees from August 27, 2021 to date of order granting final approval of
22 the judgment. *Id.* at §§ 1.4, 1.34, 3.2.3. Class Members' Individual Settlement Payments will be
23 distributed after final approval of the Settlement and Defendants fund the Gross Settlement Sum. *Id.*
24 at §11. Plaintiff's counsel provided notice to the LWDA by serving them a copy of this motion. (See
25 Proof of Service filed concurrently with this motion).

26 **2. Class Definition**

27 The Settlement Agreement defined "Class" as the following:
28

Class” shall be defined as all current and former hourly employees who worked for Defendant in California any time or times between August 27, 2017, through the date of preliminary approval of the parties’ settlement agreement by the Court, (the “Class Period”), and excluding any persons who are currently represented by counsel and have a civil action pending, and also excluding any persons who opt-out of the class.

(Ladva Decl., Exhibit 1, Class Action and PAGA Settlement Agreement and Class Notice, Pg. 1, Section 1.5).

3. Aggrieved Employee Definition

For the purposes of allocating funds to the PAGA Claim, “Aggrieved Employees” was defined as “all current or former non-exempt employees who worked for Glassfab in the State of California from August 27, 2021, through the date of final approval of the parties settlement agreement by the Court.” (Ladva Decl., Exhibit 1, Class Action and PAGA Settlement Agreement and Class Notice, Pg. 1, Section 1.4).

4. Settlement Range for Class Members

The Individual Settlement Amount shall be calculated by multiplying the Class Member Payout Fund by a fraction, the numerator of which is the total number of Workweeks the Participating Claimant worked during the Class Period, and the denominator of which is the aggregate number of workweeks worked by all Participating Class Members during the Class Period. (Ladva Decl., Exhibit 1, Class Action and PAGA Settlement Agreement and Class Notice, § 1.14.) The gross range of payment to the class will be between \$201.57 to \$689.84. (Ladva Decl., Exhibit 1, Class Action and PAGA Settlement Agreement and Class Notice, § 1.14.)

The Individual Settlement Payments to Class Members will be allocated for tax purposes as follows: 10% to wages; 90% to penalties and interest. (Ladva Decl., Exhibit 1, Class Action and PAGA Settlement Agreement and Class Notice, § 3.2.4.1. The employer- side payroll taxes on the portion allocated to wages will be paid by Defendants separately from, and in addition to the Gross Settlement Sum. No portion of the Gross Settlement Sum will revert to Defendants. The Settlement Administrator will calculate the actual estimated recovery to include in the Class Notice and provide the estimated low and high range of possible recovery at final approval. (*Id.*, Settlement Agreement, Exhibit 1 (Notice of Class Action Settlement).

1 **5. Proposed Opt-Out and Objection Process**

2 The "Response Deadline" for opt outs means 60 days after the Administrator mails Notice to
3 Class Members and Aggrieved Employees, and shall be the last date on which Class Members may:
4 (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
5 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been
6 returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the
7 Response Deadline has expired. (Ladva Decl., Exhibit 1, Class Action and PAGA Settlement
8 Agreement and Class Notice, § 1.43).

9 The Class Notice provides information regarding the nature of the lawsuit, a summary of the
10 substance of the settlement terms, the formula for calculating Individual Settlement Payments, the
11 individual's estimated payout, a statement that Class Members who take no action will release their
12 claims and receive settlement checks, instructions regarding how to dispute the calculations,
13 instructions regarding how to request exclusion or object to the Settlement, the date for the final
14 approval hearing, the amounts sought for attorneys' fees and costs, the Settlement Administration
15 Costs, the class representatives' Service Award, the PAGA allocation, and information on how to
16 access the court's website to view the case records. See Ladva Decl., Exhibit 1, Settlement
17 Agreement, Exhibit 1 (Class Notice).

18 The Class Notice provides instructions for Class Members who choose to exclude themselves
19 from the Settlement. Id. To opt out, Class Members are instructed to submit a Request for Exclusion
20 to the Settlement Administrator by a specified date (60 calendar days after the date of mailing of the
21 Class Notice). Id. at pp. 1, 6-7. Class Members do not need to submit a claim form to participate in
22 the Settlement. See Settlement Agreement, Exhibit 1 (Class Notice), p. 1. Class Members are
23 informed of how they can object to the Settlement, and the Class Notice informs Class Members of
24 the date, time, and location of the final fairness and approval hearing so that they can appear in
25 person. Id. at pp. 1, 6-7. Accordingly, the content of the Class Notice complies with the requirements
26 of Cal. R. Ct. 3.766(d).
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1 If Class Notice packets are returned as undeliverable, the Settlement Administrator will
2 perform a skip-trace or other search, and re-mail the Class Notice. Settlement Agreement, § 1.10.
3 The initial 60- day notice period ensures the notice program provides due process by giving Class
4 Members enough time to determine whether they want to participate in the Settlement. This means
5 of notice is reasonably calculated to apprise Class Members of the pendency of the action. See Cal.
6 R. Ct. 3.766 (d)-(f).

7 **6. Proposed Release**

8 The release to be given by Class Members is on behalf of themselves and their respective
9 former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
10 release GlassFab, its agents, officers, employees, directors, owners, subsidiaries, DBA's, affiliates,
11 attorneys and parent companies, ("Released Parties") ("Defendant Releasees"). (Ladva Decl.,
12 Exhibit 1, Settlement Agreement, § 6.2.) Under the proposed release, Class Members who do not
13 exclude themselves from the Settlement will be deemed to have released or waived the following
14 "Released Claims" against the Defendant Releasees during the period of August 17, 2017, through
15 the date of preliminary approval:
16

17 "Any and all claims that were asserted in the Action, or that arise from or could have been
18 asserted based on the facts, circumstances, transactions, events, occurrences, acts,
19 disclosures, statements, omissions or failures to act alleged in Plaintiff's Complaint or First
20 Amended Complaint, regardless of whether such claims arise under federal, state and/or local
21 law, statute, ordinance, regulation, common law, or other source of law ("the Released
22 Claims"). The Released Claims specifically include, but are not limited to Labor Code §§
23 201, 202, 203, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, and 2802 and the
24 related IWC Wage Order No. 1-2001 and Business & Professions Code §§ 17200, et seq.
25 claims based on alleged violations of these Labor Code and Wage Order provisions) and all
26 other claims, such as those under the California Labor Code, Wage Orders, regulations,
27 and/or other provisions of law, that could have been pleaded based on the facts asserted in
28 the Action, including: (1) failure to timely pay employees upon separation or discharge; (2)
failure to pay all wages due and owing for time worked; (3) failure to reimburse necessary
business expenditures, (4) failure to provide meal or rest periods of compensation in lieu
thereof, (5) failure to provide accurate itemized wage statement, (6) all related violations of
the applicable Wage Orders; (7) all related violations of California's unfair competition law;
and (8) interest, fees, and costs ("Released Claims"). The enumeration of these specific
statutes shall neither enlarge or narrow the scope of res judicata based on the claims that were
asserted in the Action or could have been asserted in the Action based on the facts and
circumstances alleged in any Complaint on file in the Action."

(Ladva Decl., Exhibit 1, Settlement Agreement, § 6.2.)

1 **IV. ARGUMENTS**

2 **A. LEGAL STANDARD FOR FINAL APPROVAL.**

3 California Rules of Court, rule 3.769, subdivision (g) provides that the court must conduct an
4 inquiry into the fairness of a proposed class action settlement prior to final approval. The trial court
5 has broad powers to determine whether a proposed settlement is fair. *Mallick v. Superior*
6 *Court* (1979) 89 Cal. App. 3d 434, 438, 152 Cal. Rptr. 503. The standard for approval of class
7 settlements in California is that the settlement be fair, reasonable, and adequate for class members
8 overall. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 56 Cal. Rptr. 2d 483. 1801."[A]
9 presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining;
10 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
11 counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Wersha v.*
12 *Apple Computer, Inc.* 91 Cal. App. 4th 224, 245 (2021), disapproved on other grounds as stated
13 in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal. 5th 260, 270. "[T]he test is not the
14 maximum amount plaintiffs might have obtained at trial on the complaint but, rather, whether the
15 settlement is reasonable under all of the circumstances." *Id.* at p. 250; *see also City of Detroit v.*
16 *Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455 (*City of Detroit*) (stating that a proposed settlement
17 that amounts to a fraction of the potential recovery does not in itself render the proposed settlement
18 grossly inadequate.).

19
20
21 In making this determination, the court considers all relevant factors, including "the strength
22 of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk
23 of maintaining class action status through trial, the amount offered in settlement, the extent of
24 discovery completed and the stage of the proceedings, the experience and views of counsel, the
25 presence of a governmental participant, and the reaction of the class members to the proposed
26 settlement.'" *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, 85 Cal. Rptr. 3d
27
28

1 20 (*Kullar*). The recovery should represent a "reasonable compromise, given the magnitude and
2 apparent merit of the claims being released, discounted by the risks and expenses of attempting to
3 establish and collect on those claims by pursuing the litigation." (*Id.* at p. 129.) Nevertheless, the
4 strength of the case on the merits for the plaintiff is the most important factor, balanced against the
5 amount offered in settlement. *Id.* at p. 130.

6 The court already determined on Plaintiff's motion for preliminary approval of class
7 settlement that many of the factors established that the settlement is fair. The parties engaged in
8 arms-length settlement negotiations, the parties engaged in formal and informal discovery, the
9 parties attended mediation, and were represented by experienced counsel. Additionally, Plaintiff
10 provided significant analysis of the risks and merits of the claims in his Motion for Preliminary
11 Approval which the Court assessed. Further, no parties objected to the class settlement.

12
13 **B. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION**
14 **SETTLEMENT.**

15
16 **1. The Settlement is the Result of Arm's Length Negotiations.**

17 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
18 evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are
19 conducted in good faith. Here, the Settlement was the product of a mediation session with a
20 respected mediator. The negotiations were adversarial, conducted at arm's length and tampered by
21 the efforts of both sides to serve the interests of their clients. The amounts of Plaintiffs' requested
22 Service Awards were not negotiated until after the Parties agreed to the Gross Settlement Sum and
23 many other items.

24
25 **2. Plaintiff's Counsel Conducted Sufficient Investigation and Discovery.**

26 Plaintiff's Counsel thoroughly investigated the class claims, applicable law, and potential
27 defenses. In particular, Plaintiff's Counsel assessed the value of the class claims using Defendants'
28

1 data and documents produced through analysis of relevant documents and data. Accordingly,
2 Plaintiffs' Counsel fully understood the strengths and weakness of the claims before the Parties
3 reached a settlement.

4 **3. The Settlement is Fair, Reasonable, and Adequate.**

5 The Gross Settlement Amount of \$345,000 represents a fair, reasonable, and adequate
6 resolution of this Case. The proposed settlement was calculated using information and data
7 uncovered through formal discovery, informal discovery, case investigation, and the exchange of
8 information as part of the mediation. The proposed settlement considered the potential risks and
9 rewards inherent with this case. After considering all the facts in this case, the gross settlement
10 amount represents a considerable recovery for all Class Members.

12 Class Members will receive \$184,251.00 of the gross settlement, which was determined by
13 subtracting Class Counsel's Fees (\$120,750), Litigation Costs (\$17,000), Named Plaintiff Service
14 Award (\$5,000), PAGA LWDA Payment (\$7,500), and the Administration Costs (\$10,499.00) from
15 the \$345,000 Settlement Amount. (Romo Decl., ¶ 15). The average estimated payment is \$337.46
16 and the highest estimated payment is \$911.99. (Romo Decl., ¶ 16).

18 At the final approval stage, "[a]n allocation formula need only have a reasonable, rational
19 basis [to warrant approval], particularly if recommended by experience and competent class
20 counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D. N.Y. 2001) 127
21 F. Supp. 2d 418, 429-30. Considering the above considerations, Class Counsel believe the proposed
22 settlement is fair, reasonable, and in the best interest of the class. Although the recommendation of
23 Class Counsel are not conclusive, the Court can properly take the recommendations into account,
24 particularly if Class Counsel appear to be competent, have experience with this type of litigation,
25 and significant discovery and investigation has been completed. CONTE & NEWBERG, NEWBERG ON
26 CLASS ACTION, § 11.47 (4th Ed.). This Court should grant final approval of the proposed settlement.
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1 **4. There are No Objections to the Settlement.**

2 The Settlement was well received by the Class – not a single Class Member objected to the
3 Settlement nor did any Class Member request to be excluded. (Roma Decl., ¶¶ 11-12). California
4 courts have found that a small number of objectors indicates the class’ support for a settlement and
5 strongly favors final approval. *7-Eleven Owners for Fair Franchising v. Southland Corp.* 85 Cal.
6 App. 4th 1135, 1152-53 (2000); *Wersha v. Apple Computer, Inc.* 91 Cal. App. 4th 224, 250-51
7 (2021), disapproved on other grounds as stated in *Hernandez v. Restoration Hardware, Inc.* (2018) 4
8 Cal. 5th 260, 270. The lack of any objections and exclusions speaks volumes about the fairness,
9 reasonableness, and adequacy of this settlement. Accordingly, the settlement is presumed to be fair,
10 reasonable, and adequate, and the court should grant final approval of the settlement.

11 **5. The Class was Represented by Adequate Class Counsel.**

12 Here, class counsel is both qualified and experienced in class action wage claims. Ladva
13 Law Firm and Law Office of Daniel Vega have prosecuted numerous class actions claims and has
14 shown his qualifications through the prosecution of this case, which has resulted in an equitable
15 settlement for the class members. *See Generally* Declarations of Ashwin Ladva; Declaration of
16 Daniel Martinez de la Vega; and Declaration of Scott Nakama. Plaintiff does not have any interests
17 in this case that conflict with the interests of the potential class members, Plaintiff is willing and able
18 to adequately represent the interests of the classes, has been and will continue to participate in the
19 litigation, and understand that he must seek the best interest of the class throughout litigation. *See*
20 *Generally Declaration* of Hector Estrada.

21 **C. PLAINTIFF ESTRADA SHOULD BE AWARDED THE REQUESTED**
22 **ENHANCEMENT AWARD.**

23 Plaintiff Estrada has assisted in this litigation and has similar and/or typical claims of
24 other class members. Plaintiff was employed by Defendant as an hourly-paid, non-exempt
25 employee. (Estrada Decl. ¶ 3). Plaintiff worked over 40 hours a week and his shifts were in excess
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1 of 10 hours. (Estrada Decl. ¶ 4). Plaintiff decided to seek legal advice about his work experiences at
2 Defendant and about filing a lawsuit to redress my grievances regarding his wages. (Estrada Decl. ¶
3 4). Plaintiff contacted the Ladva Law Firm and spoke with attorney Scott Nakama. (Estrada Decl. ¶
4 5). Plaintiff wanted help for himself and other employees regarding owed wages and for Defendant
5 not compensating its employees for missed rest breaks. (Estrada Decl. ¶ 5)

6 Plaintiff had to work during his 10 min breaks. (Estrada Decl. ¶6). Plaintiff believes he was
7 only paid for about 2 breaks a day even though from September to December he worked shift of over
8 12 hours. (Estrada Decl. ¶6). Since becoming involved in this Case, Plaintiff has spent over 50 hours
9 meeting with his attorneys concerning the Case and his responsibilities as a Representative Plaintiff,
10 which included gathering documents concerning his employment with Defendant, reviewing
11 documents with his attorneys, speaking with other former employees of Defendant, providing
12 guidance regarding the duties of other employees and answering discovery, any related questions,
13 and reviewing and providing feedback to my attorneys regarding arguments and documents
14 produced by Defendant's attorneys. (Estrada Decl. ¶ 8). Plaintiff routinely checked in with his
15 attorneys and their staff to make sure they had all his most current information. (Estrada Decl. ¶8).

16 Plaintiff was available to answer any questions his attorneys had and during the mediation,
17 he made myself available all day to respond to any inquiries and provide input on the negotiations.
18 (Estrada Decl. ¶12). Plaintiff also reviewed the Settlement Agreement, asked relevant questions, and
19 discussed the potential settlement with his attorneys. (Estrada Decl. ¶ 23).

20 Plaintiffs seek a Service Award of up to \$5,000 to Plaintiff for accepting the responsibilities
21 of representing the interests of the Class and assuming risks and potential costs that were not borne
22 by any other Class Members. A named plaintiff is eligible for payment that reasonably compensates
23 him or her for undertaking and fulfilling a fiduciary duty to represent absent class members. See
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1 *Cellphone Termination Fee Cases, supra*, 186 Cal. App. 4th at 1393; *Bell v. Farmers Ins. Exch.*, 115
2 Cal. App. 4th 715, 726 (2004).

3 Here, Plaintiff had the option to pursue his claims individually, but instead chose to pursue
4 this class action, delaying individual recovery until approval of a class action settlement. Throughout
5 the case, Plaintiffs assisted counsel in gathering the evidence necessary to prosecute the class claims,
6 maintained regular contact with counsel, were available on the day of mediation and communicated
7 with his attorneys during the day of mediation to answer critical questions, and reviewed the
8 Settlement to make sure it was fair to the Class. No action would likely have been taken by Class
9 Members individually, and no compensation would have been recovered for them, but for Plaintiffs'
10 services on behalf of the Class.

12 By actively pursuing this action, Plaintiff furthered the California public policy goal of
13 enforcing the State's wage and hour laws. *See Sav-On Drug Stores, Inc., supra*, 34 Cal. 4th at 340.
14 The requested Service Award for Plaintiffs' service as the class representative and for a general
15 release of all employment claims is reasonable and should be preliminarily approved. At the final
16 approval stage, Plaintiffs will further support the request for Service Awards by declarations
17 addressing the factors for the award.

19 **D. THE ATTORNEYS' FEES & COSTS REQUESTED BY CLASS COUNSEL**
20 **SHOULD BE APPROVED.**

21 The purpose of an attorneys' fee award in a class action litigation is to reward counsel who
22 invested in a case despite the risk of non-payment and achieved a substantial positive result for the
23 class. Attorneys' fees are awarded as a matter of equity. Plaintiff seeks the appointment of Ashwin
24 Ladva and Scott Nakama of Ladva Law Firm, and Daniel Martinez de la Vega of the Law Offices of
25 Daniel Vega as Class Counsel. The attorneys performed significant work and expended litigation
26 costs in prosecuting the matter with no guarantee of payment. (See generally Nakama Decl., Vega
27 Decl, and Ladva Decl.). Plaintiff's Counsel seeks \$120,750.00 in attorneys' fees, which is up to 35%
28

1 of the Gross Settlement Sum, and up to \$17,000 in reimbursement of litigation costs. (Ladva Dec. ¶
2 77-81) Given the work performed in this matter, the extensive information exchange, and substantial
3 recovery obtained on behalf of Plaintiff and the Class, Plaintiff’s Counsel achieved a settlement
4 through efficient and diligent work.

5 Pursuant to California Code of Civil Procedure section 1021.5, a court may award attorney
6 fees to the successful party in an action that resulted in the enforcement of an important right
7 affecting the public interest. A trial court may award attorney fees to a “successful party” in an action
8 that has “resulted in the enforcement of an important right affecting the public interest if: (a) a
9 significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a
10 large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to
11 make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the
12 recovery, if any. ...” *Carian v. Department of Fish & Wildlife* (2015) 235 Cal. App. 4th 806. In
13 *Vasquez*, the California Supreme Court held that pre-settlement negotiations are not required to award
14 attorneys’ fees under California Code of Civil Procedure section 1021.5. “No rule applicable to this
15 case required plaintiff, in order to recover attorney fees under Code of Civil Procedure section
16 1021.5, first to attempt to settle the matter short of litigation.” *Id.* at 259.

17
18 Successful plaintiffs in a class action challenging a bank’s assessment of fees against
19 customers who failed to make timely payments, were awarded attorneys’ fees pursuant to CCP
20 section 1021.5, expert fees, and other costs. *Beasley v. Wells Fargo* (1991) 235 Cal.App.3d 1407,
21 *overruled in part, Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142. Likewise
22 in *Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, an appellate court
23 awarded attorneys fees to class counsel under CCP section 1021.5 in a class action for employees to
24 receive reimbursement for expenses because the class action benefited many workers. Similarly,
25 attorneys’ fees were awarded pursuant to CCP section 1021.5 in a class action on behalf of newspaper
26 home delivery carriers for wrongfully withheld reimbursement of business expenses. *Espejo v. the*
27 *Copley Press, Inc.* (2017) 13 Cal.App.5th 329.

1 Here, this Class Action was brought on behalf of the public as Plaintiff Estrada brought this
2 action to prevent GTS from unlawfully failing to pay class members all wages that they earned via
3 injunctive relief and have incurred significant costs including costs of mediation.

4 **1. Legal Standard for Attorneys' Fees in a Class Action Settlement.**

5 Where the amount of a settlement is a "certain easily calculable sum of money,"
6 California courts may calculate attorneys' fees as a reasonable percentage of the settlement
7 created. Weil and Brown, CALIFORNIA PRACTICE GUIDE, CIVIL PROCEDURE BEFORE TRIAL,
8 Chapter 14, section 14:145; *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1808. The
9 ultimate goal is the award of a "reasonable" fee to compensate counsel for their efforts,
10 irrespective of the method of calculation. *Apple Computer, Inc. v. Superior Court* (2005) 126
11 Cal.App.4th 1253, 1270; *Consumer Privacy Cases* (2009) 175 Cal. App. 4th 545, 557-8.

12 Trial courts have "wide latitude" in assessing the value of attorneys' fees, and their
13 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
14 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal. 4th 1122,
15 1132 (The "experienced trial judge is the best judge of the value of professional services
16 rendered in his court[.]"); *Cellphone Termination Fee Cases* (2009) 180 Cal. App. 4th 1110 1118.
17 California law provides that attorneys' fees awards should be equivalent to fees negotiated in the
18 legal marketplace and paid in comparable litigation based on the result achieved and risk incurred.
19 See *Lealao* at 47, 50. Fee awards that are too small will "chill the private enforcement
20 essential to the vindication of many legal rights and obstruct the representative actions that
21 often relieve the courts of the need to separately adjudicate numerous claims." *Id.* At 53.
22 Therefore, fees in representative actions should approximate the probable terms of
23 contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation
24 *Id.* at 48. The percentage-of-the-benefit approach is preferred in such cases because "it better
25 approximates the workings of the marketplace than the lodestar approach." *Id.* at 49.

26 **2. A Fee Award of a Percentage of the Entire Fund is Appropriate.**

27

28

1 California and federal courts have long recognized that an appropriate method
2 for determining the award of attorneys' fees is based on a percentage of the total value of
3 benefit afforded to class members by the settlement. *Boeing Co. v. Van Gernert* (1980) 444
4 U.S. 472 478; *Paul, Johnson, Alston & Hunt v. Grawlty* (1989) 886 F.2d 268, 272; *Vincent v.*
5 *Hughes Ai West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest*, 20 Cal.3d 25, 34
6 (1977).²⁹ Th purpose of this equitable doctrine is to spread litigation costs proportionally
7 among all the beneficiaries so that the active beneficiary does not bear the entire burden
8 alone. See, *Vincent v Hughes Air West, Inc.*, *supra*, 557 F.2d at 769. The Common Fund
9 Doctrine provides that where a litigant's efforts create a fund from which others derive
10 benefits, the litigant may require the passive beneficiaries to compensate those who
11 created the fund. See, R. Pearle, CALIFORNIA ATTORNEY FEE AWARDS (CEB, 1993) §7A,
12 p. 5-7 (noting that the common fund exception is a equitable doctrine, permitting attorneys'
13 fees and costs to be paid out of the fund or directly o behalf of the other parties enjoying the
14 benefit). Both State and Federal courts have embrace this doctrine. See *Serrano*, *supra*,
15 20 Cal.3d at p. 35; *Crampton v. Takegoshi* (1993) 1st al.App.4th 308, 317; *Vincent*,
16 *supra*, 557 F.2d at p. 769. Recently, California Supreme Court affirmed the percentage of the
17 common fund method as the proper measure of attorneys' fees. See *Lafitte v. Robert Half*
18 *International, Inc.*, 1 Cal. 5th 580 (August 11, 2016).

20 Courts have consistently recognized that class litigation is increasingly necessary to
21 protect the rights of individuals whose injuries and/or damages are too small to economically
22 justify individual representation. Accordingly, in determining a reasonable common fund fee
23 award, courts award fees to serve as an economic incentive for lawyers to bring class action
24 litigation to achieve increased access to the judicial system for meritorious claims and to enhance
25 deterrents to wrongdoing. This is especially true in situations where the multiple similar alleged
26 wrongs would not be economically feasible to pursue individually, such as here. See A. Conte,
27 *Attorney Fee Awards*, 2nd Ed. 1993, 104, p.6.

1 When this Case was originally filed, not only was it inescapably contingent, but the
2 prospect of a long, drawn-out battle with Defendant represented by premier employment defense
3 counsel, was a certainty. By taking on this "battle" on a contingency basis, Class Counsel risked
4 substantial economic loss if they were not successful. This substantial risk is the reason that
5 courts approve the use of the percentage method when a common fund is created by the efforts
6 of Class Counsel. Under the terms of the Settlement negotiated in this Case, Participating Class
7 Members will derive a significant cash benefit. Defendant will pay a Gross Settlement Amount
8 of \$345,000, from which a Net Settlement Amount of approximately \$184,251.00 will be
9 allocated to Participating Class Members.

10 Class Counsel's fee award request, for their successful prosecution and resolution of
11 this action, calculated as a percentage of the total value of benefits afforded to the Class
12 Members by the Settlement, is appropriate and reasonable. Compensating class counsel in
13 class litigation on a percentage basis (common fund) makes good sense because (1) it is
14 consistent with the private market where contingent fee attorneys are customarily compensated
15 on such a basis; (2) it aligns the interests of class counsel and absent class members in achieving
16 the maximum possible resolution of the case; and (3) it encourages the most efficient and
17 expeditious resolution of the litigation by providing an incentive for early, yet reasonable,
18 settlement. The award in this Case meets all those criteria such that attorneys' fees should be
19 approved on a percentage basis.

20 The percentage method is consistent with and is intended to mirror practice in the private
21 marketplace where contingent fee attorneys typically negotiate percentage fee arrangements with
22 their clients. A named plaintiff's agreement to pay a contingent fee is powerful evidence of a
23 reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to
24 review the consideration agreed to be paid by the named plaintiff(s). If the named plaintiff has
25 employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of
26 the class, who will enjoy the benefits of this settlement without incurring the risks of bringing the
27 claim, to pay less than the named plaintiff. Here, Plaintiff have agreed to a contingency fee of
28 thirty-five percent (35%) of the recovery, which equals what Class Counsel now seek.

1 Furthermore, a common fund award is not dependent on a determination of the actual
2 amount claimed out of the fund by those entitled-it is the creation of the fund that is the crucial
3 fact. In *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that
4 "it is equitable that [the attorney's] compensation and expenses should come from the entire fund
5 saved for all classes concerned before it is distributed." *Winslow v. Harold G. Ferguson Corp.*
6 (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly recognizes that "in a traditional common
7 fund case, [a percentage-based fee] may be calculated on the basis of the total fund made
8 available rather than the actual payments made to the class." *Lealao, supra*, 82 Cal.App.4th at p.
9 51; *see also Boeing, supra*, 444 U.S. at p. 478 ("a litigant or a lawyer who recovers a common
10 fund for the benefit of persons other than himself or his client is entitled to a reasonable
11 attorneys' fee from the fund as a whole").

12 Plaintiff has obtained the Class Counsel and Class Counsels' efforts resulted in a net recovery.
13 Therefore, the results justify the award of a fee that is the equivalent of the standard market fee and that
14 is consistent with the retainer agreement entered into by Plaintiffs and Class Counsel. Thus, the
15 Attorney Fee Award requested is appropriate.

16 **3. The Requested Attorney Fee Award and Cost Award Is Within the Range Fees** 17 **Approved in Comparable Common Fund Cases**

18 Assessing an appropriate fee based on a percentage of the fund involves considering "all of
19 the circumstances of the case." There is sparse case law addressing the evaluation of
20 reasonable attorneys' fees in employee class actions as appellate cases addressing fees arise
21 almost exclusively where awards were challenged by defendants or objectors - the only parties
22 with standing to appeal. *Wershba*, 91 Cal.App.4th at 236.

23 Several studies of class action fee awards have found that the median common fund fee
24 award is approximately one-third of the total settlement fund. See, e.g., *Chavez v. Netflix, Inc.*
25 (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that "fee awards in class
26 actions average around one-third of the recovery."); Reagan W. Silber and Frank E. Goodrich,
27 COMMON FUNDS AND COMMON PROBLEMS: FEE OBJECTIONS AND CLASS COUNSEL'S
28 RESPONSE, 17 Rev. Litig. 525, 546.

1 The requested fee falls in the mid-range of percentage class fee awards, which
2 commonly range from twenty percent (20%) to fifty percent (50%) of a common fund, and
3 constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming
4 litigation on a contingent basis and compensates Class Counsel for their efforts, as well as the
5 result achieved for the benefit of the Class. Numerous state and federal courts in California
6 routinely approve fee requests equal to or greater than thirty-three (33%) of the common fund.
7 Indeed, some courts have found that an award of thirty-three percent (33%) of the common fund
8 represents the "benchmark" in California. *Smith v. CRST Van Expedited, Inc.* (S.D. Cal.
9 Jan. 14, 2013) 10-CV-1116- IEG WMC, 2013 WL 163293, *5; *Dennis v. Kellogg Co.*
10 (S.D. Cal. Nov. 14, 2013) 09- CV-1786-L WMC, 2013 WL 6055326, at *7 ("This
11 percentage compares favorably with both California (33%) and federal (25%) benchmarks
12 and the requested fee compares well with a lodestar cross-check as well.").

13 In short, Class Counsel's fee request of \$120,750 (thirty-five percent (35%) of the
14 Gross Settlement Amount) is in line with awards in similar cases in California and
15 nationwide and demonstrates that Class Counsel's fee request is consistent with market rates
16 and is reasonable

17 **4. The Attorneys' Fees Requested by Class Counsel Are Reasonable Based on**
18 **the Factors Considered in the Determination of Fee Awards.**

19 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors
20 to be considered in determining whether fee awards are reasonable in a common fund case:
21 (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the
22 skill requisite to perform the legal services properly; (4) the preclusion of other employment
23 by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is
24 fixed or contingent; (7) time limitation imposed by the client or the circumstances; (8)
25 the amount involved and results obtained; (9) the experience, reputation and ability of the
26 attorney; (10) the undesirability of the case; (11) the nature and length of the professional
27 relationship with the client; and (12) awards in similar cases.³² *Camden I Condominium*
28 *Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772. The court in *Camden* also

1 noted that, "[t]he analysis in a common fund case focuses not on the plaintiffs' position as
2 'prevailing parties,' but on a showing that the fund conferring a benefit on the class resulted from
3 their efforts" and thus in common fund cases "the monetary results achieved predominate over
4 all other criteria." *Camden* at 774 (Citing H. Newberg, *Attorney Fee Awards* (1986) § 2.06 at 40-
5 41.)

6 Every one of these factors favors the award sought by Class Counsel herein. However,
7 Class Counsel will address some of the factors that they believe would be most relevant to this
8 Court's fee determination. It should be highlighted that the percentage award sought is warranted
9 considering the time, effort, and expense dedicated to the Case, the contingent nature of Class
10 Counsel's fees, the risk taken in commencing this Class Action, the skill and determination
11 required, the results they have achieved, and the value of the Settlement they have obtained for
12 the Class Members. For the reasons discussed herein, an award of thirty-five percent (35%) of
13 the common fund is reasonable.

14 **a. Time & Labor.**

15 Class Counsel devoted substantial hours to this matter over the course of the
16 litigation. The Declaration of Ashwin Ladva and Daniel Martinez de la Vega, sets forth these
17 hours in detail, allocating the total time to the tasks that were required to bring this matter to
18 its successful conclusion. The work commenced with the pre-filing case analysis and
19 research and continues literally up to the moment of settlement and final approval motion
20 work and hearing.

21 This Case was litigated on a contingent basis with all the concomitant risk
22 factors inherent in such an uncertain undertaking. Had Class Counsel not been successful,
23 the time the firm devoted to this Case would have been for naught and would not have
24 produced any fee or any reimbursement for expenses. In comparing contingent fee practice to
25 hourly rate practice and considering the value of time and the carrying of costs involved in
26 contingent litigation, this practice is expected to produce well beyond the hourly rate.
27
28

1 **b. The Skill Required to Perform Legal Services Properly.**

2 The skill required to properly litigate this Case is evident not only in the results achieved,
3 but in the steps necessary to reach the same. This factor overlaps with many of the prior
4 discussions, and will not be repeated, other than to point out the obvious - a substantial
5 Settlement Agreement was finally achieved despite all the obstacles that had to be overcome.
6 Class Counsel had every intention of taking this Case to trial on a class-wide basis if Defendant
7 did not offer an appropriate class-wide settlement amount.

8 **c. The Value of the Settlement/or the Class Members.**

9 The proposed Settlement represents a reasonable resolution of this Case given the risks
10 inherent in litigating the Case through certification proceedings and at trial. All the Class
11 Members faced difficult claims on the merits. The risk of unfavorable legal determinations was
12 particularly pronounced regarding the Class Members' off-the-clock claims. Defendant argued
13 that the Class Members' claims were too disparate for adjudication on a class-wide basis and that it
14 paid the Class Members for all hours worked. Had the Case not settled, Defendant would have
15 vigorously opposed class certification. Defendant also faced risks if the Court certified the Case
16 and allowed a jury to decide class claims. And preparation for a class action trial would have
17 been extraordinarily expensive for both sides.

18 Additionally, resolution of this dispute at this stage is preferred, as the Parties were
19 moving into the phase of litigation where significant time and money would inevitably have to
20 be spent to continue litigation and prepare for trial. The risk and expense of further litigation
21 outweighed any benefit that might have been gained otherwise. The Settlement provides an
22 immediate and automatic recovery, as opposed to an uncertain result, months, if not years, in the
23 future after protracted expert discovery, trial preparation, class certification proceedings,
24 appellate review of those proceedings, further law and motion issues, and the inevitable appeals.
25 This fact also supports final approval since the Settlement affords Class Members relief while
26 avoiding further expense, risk, and delay in obtaining any further recovery. The Settlement
27
28

1 reached was the best possible under the circumstances to obtain monetary relief now and
2 preserve Defendant's ongoing business operations.

3 Defendant has agreed to pay \$345,000 to settle this Case on behalf of all Class
4 Members. Approximately \$184,251.00 will be paid out on behalf of the Class Members.
5 Prior to the deduction of taxes, the estimated *highest* Individual Settlement Share to be
6 paid is approximately \$911.99, and the estimated *average* Individual Settlement Share to
7 be paid is approximately \$337.46.

8 ***d. Whether the Fee is Fixed or Contingent***

9 Plaintiffs executed a contingent fee agreement, and therefore, the representation of
10 the Class provided by Class Counsel has been wholly contingent. Class Counsel took on this
11 matter not knowing whether they would recover anything whatsoever. Class Counsel
12 incurred actual out-of-pocket litigation costs and expenses in the amount of \$17,000 and
13 invested 325.2 hours of time to obtain relief for the Class Members.

14 In the present Case, Class Counsel has borne all the risks and costs of litigation and
15 will not receive any compensation until recovery is obtained. Class Counsel is experienced in
16 wage- and-hour class action litigation and used that experience to obtain a great result for the
17 Class. The skill and determination that Class Counsel has shown warrant the request for the
18 Attorney Fee Award and Cost Award. Considering the amount of the fee requested, the work
19 performed, and the risks incurred, the requested fees and costs are reasonable and should be
20 awarded.

21 Whether or not representation is provided on a contingency basis, and in this Case,
22 it is an important factor:
23

24 "A contingent fee must be higher than a fee for the same legal services paid as
25 they are performed [and] [...] compensates the lawyer not only for the legal
26 services he renders but for the loan of those services. A lawyer who both bears the
27 risk of not being paid and provides legal services is not receiving the fair market
28 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." (internal
quotes and citations omitted) *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 823."

1
2 This Case was litigated on a contingent basis with all the concomitant risk factors
3 inherent in such an uncertain undertaking. Had Class Counsel not been successful, the time
4 the firm devoted to this Case would have been for naught and would not have produced any
5 fee or any reimbursement for expenses.

6 ***e. The Amount Involved and the Result Achieved***

7 The result achieved is considerable considering the difficulties inherent in such cases and
8 the specific difficulties faced in this Case. There was a positive response to the Settlement from
9 the Class Members. As of September 20, 2021, no objections to the Settlement were received
10 and there were no exclusions from the Settlement.

11
12 The Settlement provides for \$345,000 (including the Attorney Fee Award, the Cos
13 Award, the Administration Costs, the portion of the PAGA Payment to the LWDA,
14 Class Representative Enhancement Payment, the Representative Plaintiff Enhancement
15 Payment, and Defendant's portion of payroll taxes on the wage portion of the Class
16 Members' Individual Settlement Share). Prior to the deduction of taxes, the estimated
17 *highest* Individual Settlement Share to be paid is approximately \$911.99, and the
18 estimated *average* Individual Settlement Share to be paid is approximately \$337.46.

19 ***f. The Reputation and Ability of the Attorneys***

20 Class Counsel has been wholly dedicated to this Case. Class Counsel consists of
21 recognized class action attorneys who employed their knowledge, skill, and experience
22 in bringing this litigation to a conclusion. The goal achieved is the considerable result
23 of obtaining \$345,000 for the Class. Class Counsel respectfully requests an Attorney Fee
24 Award equal to thirty-five percent (35%) of that amount, which equals \$120,750.

25 ***g. The Lodestar Methodology Also Justifies Approval of the Requested Fee***
26 ***Because Class Counsel Have Performed Work That is of Significant Value***
27 ***Based on Reasonable Hours and Prevailing Hourly Rates of Compensation.***
28

1 While the percentage-of-the-benefit approach is endorsed as the better approximation of
2 the workings of the marketplace than the lodestar approach, when a common fund is involved,
3 courts may also use the lodestar method to "cross-check" the results of the other. The lodestar is
4 calculated based on reasonable hours at prevailing hourly rates for the attorneys. *Ketchum v.*
5 *Moses* (2001) 24 Cal.4th 1122, 1131-32. Under California law, counsel is entitled to
6 compensation for every hour reasonably spent on the matter. *Ketchum*, 24 Cal.4th at p. 1133.

7 ***h. Class Counsel worked a reasonable number of hours.***

8
9 Reasonableness of hours is assessed by "the entire course of the litigation, including
10 pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" *Vo v.*
11 *Las Virgenes Municipal Water Dist.* (2000) 79 Cal. App. 4th 440,447.

12 As discussed above, this is a matter that required a significant amount of time and labor.
13 Defendant made it clear very early on that they disputed all claims alleged in the Case and
14 disputed that the Case was appropriate for class certification. Defendant raised defenses and
15 denied liability, and the Case involved gathering and analyzing data not only from Defendant,
16 but also from the putative class. The handling of this matter involved a great amount of effort
17 and required, and involved the exercise of, a high-level of skill, which Class Counsel had
18 because of extensive experience in employment class actions and California wage and hour
19 litigation. Long and difficult battles would have followed as the Case moved towards the
20 certification process, including declarant and expert depositions, additional written discovery,
21 and motion practice. While Class Counsel was gearing up for this battle, Class Counsel
22 undertook intense preparation to attempt to resolve the entire matter through mediation. Class
23 Counsel had to bring together all the data gathered from formal and informal discovery, as well
24 as from the Class Member contacts.

25 Counsel spent a reasonable number of hours working on this matter, and class
26 Counsel's application for the Attorney Fee Award is well within the range or
27 reasonableness considering the facts and circumstances surrounding the Case.
28

i. The Fees Requested Represent a Reasonable Hourly Rate of Compensation in Light of Class Counsel's Efforts and Experience.

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 presentation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this Case. 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.*

The lodestar is calculated based on reasonable hours at prevailing hourly rates for each attorney. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1131-32 (2001). Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133. 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).

Ladva whose hourly rate is \$700 per hour has been practicing since 2001, Martinez de la Vega whose hourly rate is \$500 has been practicing since 2008, and Nakama whose hourly rate is \$450 per hour has been practicing employment law since 2015. (Ladva Decl., ¶ 96). Ladva spent 55 hours, Nakama spent 142.2, and Martinez de la Vega worked a total of 128 total hours on this matter. (Ladva Decl., 95).

Based on the attorney time expended on this matter, the fees incurred to date total \$159,380, which results in a negative multiplier of 0.78 when cross-checked to the requested amount of the Attorney Fee Award of \$120,750. The requested fee award is only 75.7% of Class Counsel's lodestar of \$159,380.00 or a "negative" multiplier of .75. (Vega Dec. ¶ 19)

A court tasked with assessing fees first considers the reasonableness of the lodestar figure considering the time spent and reasonable hourly compensation of the attorneys

involved in the litigation. *Serrano*, 20 Cal. 3d at 48. After taking into consideration factors such as the novelty and complexity of the issues, the skill and expertise of counsel, the extent that the litigation precluded other employment, and the risk involved, the court then has the power to adjust, increase, or decrease the lodestar as appropriate. *Id.* at 49.

Class Counsel expended a significant amount of time in the litigation of this matter as detailed above. In light of these factors, the time spent and hourly rates of Class Counsel demonstrate that Class Counsel's lodestar is reasonable.

V. CONCLUSION

The proposed settlement is fair, adequate, and reasonable, as it represents a reasoned compromise reached through arms-length negotiations and considers the risks, complexity, and expense of further litigation. Based thereon, the Parties jointly request that the proposed Settlement of the Class Action Claims be approved.

Dated: February 15, 2024

LADVA LAW FIRM



By _____
Scott S. Nakama
Attorney for Plaintiff
Hector Estrada

Dated: February 15, 2024

LAW OFFICES OF DANIEL VEGA



By: _____
Daniel Martinez De La Vega
Attorney for Plaintiff
HECTOR ESTRADA