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SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

STANLEY GLENN, as an individual and
on behalf of all others similarly situated,

Plaintiff,
vs.

THE MCCOY GROUP, LLC., a
California limited liability company;
MCCOY GROUP, INC., a Wisconsin
corporation; FOODLINER, INC., a
Wisconsin corporation; and DOES 1-
100, inclusive,

Defendants.

CASE NO.: C23-00863

Assigned for All Purposes to:
Hon. Edward G. Weil
Dept. 39

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND REQUEST
FOR ATTORNEY'S FEES AND COSTS**

**[Filed concurrently with Notice of Motion and
Motion; Declarations of Nikki Trenner and
Jarrod Salinas; [Proposed] Order]**

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Stanley Glenn seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 164 individuals
4 who are current and former non-exempt employees of The McCoy Group, LLC, McCoy Group,
5 Inc., and Foodliner, Inc. (together “McCoy” or “Defendant”) and worked either directly or via a
6 staffing agency for any one or more at any location in California at any time during the Class
7 Period of August 16, 2020 to March 22, 2024. The proposed \$217,803.39 total settlement (after
8 application of the escalator clause) provides about \$100,932 in cash payments to the Class, with
9 an average award of about \$615, plus additional amounts payable under PAGA. The remaining
10 balance will cover a modest service award to Plaintiff, settlement administration costs, civil
11 penalties to the state, and reasonable attorney’s fees and costs. The parties and their counsel
12 finalized the settlement after extensive and difficult arms-length negotiations overseen by an
13 experienced and highly-regarded mediator. The Court conditionally certified the Class and
14 preliminarily approved the settlement on October 10, 2024. Since then, the Court-approved notice
15 form was mailed to the Class Members on November 8, 2024, and they have reacted very
16 favorably to the settlement. As of the filing of this motion, no Class Members have requested
17 exclusion, and there are no objections.

18 Class Counsel secured an excellent settlement with McCoy after extensive
19 investigation, litigation, and settlement negotiation and administration, all without any
20 compensation for services rendered or costs expended. The class notice duly informed
21 the class members that Class Counsel would request attorney’s fees not to exceed one-
22 third of the escalated Gross Settlement Amount, or \$72,601.13, along with reimbursement
23 of no more than \$20,000 for actual costs incurred litigating this matter. As of the filing
24 of this motion, *not one Class Member objected* to the proposed fee award. Consistent
25 with the Settlement and notice, Plaintiff now respectfully requests the Court award Class
26 Counsel’s fees in the amount of \$72,601.13 and costs in the amount of \$16,770.19, as
27 described in the Declaration of Nikki Trenner (“Trenner Decl.”) filed herewith. The
28 requested attorney’s fees are well within the range of reasonableness, especially

1 considering the complex and risky nature of this litigation, the contingent risk assumed,
2 the nearly two-plus year delay in payment and, when subjected to a lodestar crosscheck,
3 result in a base lodestar that is larger than the fees requested on a percentage of the
4 recovery basis.

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

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

9 McCoy is a family-owned and operated company that provides transportation services,
10 including shipping, truck sales, leasing, and rentals. Defendant Foodliner, Inc. is part of The
11 McCoy Group and operates as the largest food grade bulk carrier in the United States. Plaintiff
12 Glenn was employed by McCoy as a truck driver from July 2020 to May 2022. Plaintiff worked
13 primarily out of Defendant's location in Rialto, California. [Trenner Decl., ¶ 2.]

14 Plaintiff alleges several wage and hour violations by Defendant. First, he claims
15 Defendant required Plaintiff and the Class Members to work off the clock as they were forced to
16 clock out of Defendant's timekeeping system while waiting, loading, and offloading cargo to
17 prevent running out of their daily hours of service under federal DoT regulations. Plaintiff further
18 alleges Defendant failed to pay for what amounted to "on duty" meal periods. For example,
19 Plaintiff claims McCoy's "vessel security" policies mandate that drivers watch over their
20 equipment at all times during their shifts, and that other policies requiring that employees stay on
21 schedule and make all deliveries on time likewise caused meal periods to be "on duty." Plaintiff
22 also alleged he and the Class Members had to use their personal cell phones for work related
23 purposes, including communicating with supervisors before and after their shifts and
24 downloading the company application to their personal phones to conduct daily work activities,
25 all without any reimbursement. [Trenner Decl., ¶ 3.]

26 Based on these allegations, on April 13, 2023, Plaintiff filed the underlying class action
27 against McCoy on behalf of himself and all other similarly situated non-exempt employees
28 alleging (1) failure to pay minimum wages and liquidated damages; (2) failure to furnish itemized

1 wage statements; (3) failure to timely pay all wages due upon separation of employment; (4)
2 failure to reimburse business expenses; and (5) violations of the Unfair Competition Law. On
3 October 3, 2023, after exhausting administrative remedies, Plaintiff filed a First Amended
4 Complaint adding a cause of action under PAGA. The FAC is the operative complaint for
5 purposes of settlement. [Trenner Decl., ¶ 4.]

6 McCoy has at all times denied Plaintiff's allegations and maintained its payroll and
7 timekeeping policies and procedures comply with California law and that it paid the class
8 members for all wages due. Defendant also contends there would be no need for any class
9 member to use their own phone on company business and therefore no reimbursement is owed.
10 Additionally, McCoy strongly contends the case cannot be maintained as a class action, arguing
11 for example that to the extent class members worked off the clock, it was intermittent and
12 infrequent and evidence of such off the clock work would be anecdotal, and therefore
13 individualized issues would predominate. [Trenner Decl., ¶ 5.]

14 After Plaintiff filed his complaint, the Parties met and conferred on discovery, potential
15 law and motion, and other case management issues, and ultimately agreed to attempt early
16 mediation. The Parties then engaged in extensive informal discovery to facilitate an exchange of
17 information necessary to engage in a meaningful mediation. The Parties then engaged Steve
18 Mehta, Esq., a highly respected mediator with extensive wage and hour class action experience
19 and, in February 2024, participated in a full day mediation with Mr. Mehta. By the end of the day,
20 the Parties were able to reach agreement on all major issues. [Trenner Decl., ¶¶ 6-7.] The Court
21 granted preliminary approval to the settlement on October 10, 2024.

22 Class Notices were mailed to class members on November 8, 2024, with a 45-day
23 window (to December 23, 2024) for class members to opt out or object to the proposed
24 settlement. [Declaration of Jarrod Salinas ("Salinas Decl."), ¶¶ 5, 8-10.]

25 **III. THE PROPOSED SETTLEMENT TERMS**

26 Under the settlement and after application of the escalator clause, McCoy will pay
27 \$217,803.39 into a common fund, the Gross Settlement Amount ("GSA"). [Salinas Decl., ¶ 12.]
28 Attorney's fees of up to \$72,601.13 (1/3 of the escalated GSA), litigation costs of up to \$20,000

(only \$16,770.19 is requested), settlement administration costs of \$7,500, a service award to Plaintiff of no more than \$10,000, and PAGA civil penalties of \$10,000,¹ all will be paid from the GSA. The balance of around \$100,932 will be allocated pro rata to the Class based on their weeks worked during the Class Period. None of the GSA will revert to McCoy. [Trenner Decl., ¶ 8.]

A. Certification of the Settlement Class

The Court conditionally certified a settlement class including all current and former non-exempt employees who worked either directly or via a staffing agency for any one or more of the Defendants at any location in California at any time during the Class Period of August 16, 2020 to March 22, 2024. The Settlement Administrator ultimately mailed class notices to 164 individuals identified as members of the Class. [Salinas Decl., ¶ 5.] Nothing has changed to require reconsideration of the Court's certification of the Settlement Class.

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates McCoy to pay \$217,803.39 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least \$100,932 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to expenses, penalties and interest, which allocation is consistent with McCoy's potential liability. McCoy will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed (because a class member does not cash their settlement check) will be forwarded to the State Controller's Unclaimed Property Fund. [Trenner Decl., ¶ 9.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked in California as a McCoy employee during the Class Period. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria

¹ Consistent with PAGA, 75% of that amount or \$7,500, will go the LWDA for the State's share of the civil penalties, while the remaining 25% or \$2,500, will be distributed pro rata to the Aggrieved Employees.

1 typically used in determining appropriate amounts of unpaid wages, unreimbursed expenses, and
2 potential statutory penalties under applicable law. These methods are intended to ensure each
3 Class Member receives a settlement award corresponding to the relative value of their potential
4 claims. The proposed allocation provides a reasonable way to compensate Class Members based
5 on the amount of time they worked for McCoy in California and the amount unpaid off the clock
6 work, unreimbursed expenses, etc. [Trenner Decl., ¶ 10.]

7 The average class award will be approximately \$615, and class awards will range from
8 about \$8 to over \$1,600. The average PAGA award will be about \$19. [Salinas Decl., ¶¶ 14-15.]

9 **C. Settlement Administration**

10 Phoenix Settlement Administrators, as the Court-approved Settlement Administrator,
11 mailed the Notice Packet to the Class members after making all reasonable effort to ascertain
12 the best mailing address, including running each address through the National Change of
13 Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Salinas
14 Decl., ¶¶ 3-7.] The Class Notice, previously approved by the Court, duly informed Class
15 Members of the settlement terms, including the estimated relief each Class Member will
16 receive, the amounts to be requested for attorney's fees and the class representative
17 enhancement awards, and the right to opt out of or object to the settlement. [Salinas Decl.,
18 ¶ 5, Exh. A.] Phoenix mailed 164 Notice Packets on November 8, 2024. [Salinas Decl., ¶ 5.]
19 Ultimately, zero Notice Packets were deemed undeliverable, representing a 100% success
20 rate. [Salinas Decl., ¶ 7.] The 45-day response window for objecting to the settlement expired
21 on December 23, 2024. [Salinas Decl., ¶¶ 8-10.] As of the filing of this motion, Phoenix has
22 received zero requests for exclusion (for a 100% participation rate), and zero objections to
23 the settlement. No disputes have been submitted regarding the information used to calculate
24 class member settlement shares. [Salinas Decl., ¶¶ 8-10.]

25 **D. Release of Claims**

26 All Participating Class Members will release McCoy from all claims alleged in the
27 operative complaint, or that could have been brought based on the factual allegations in the
28 complaint during the Class Period. The release is limited to the claims that were actually pleaded

1 or could have been pleaded based on the alleged facts in the complaint. [Trenner Decl., ¶ 11.]

2 **E. PAGA Penalties and Notice to the LWDA**

3 The Parties allocated \$10,000 to resolution of Plaintiff's claims under PAGA and, as
4 addressed in more detail below, Plaintiff submits that amount is fair, reasonable and adequate, and
5 consistent with PAGA's underlying purposes. As required by Labor Code section 2699(l)(2),
6 Plaintiff gave notice to the LWDA of the proposed settlement and the preliminary approval hearing.
7 [Trenner Decl., ¶ 12; Exh. 1.]

8 **IV. ARGUMENT**

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

23 On a motion for final approval, the trial court is charged with determining whether, in
24 light of the total circumstances of the action and the response of the class members to the
25 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
26 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
27 determination and may consider a number of relevant factors, including: the strength of
28 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of

1 further litigation; the amount offered in settlement; the extent of discovery and stage of the
2 proceedings; the experience and opinion of counsel; and the reaction of class members to the
3 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,
4 courts generally apply a presumption of fairness to a proposed class action settlement when:
5 (1) the settlement is reached through arm's-length bargaining; (2) investigation and
6 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
7 experienced in similar litigation; and (4) the percentage of objectors is small. Dunk, 48
8 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

9 **A. The Proposed Settlement Merits Final Approval**

10 The proposed settlement of this action warrants final approval under the standards
11 summarized above. The settlement is fair, reasonable and adequate, and represents a
12 favorable resolution of highly disputed claims. Further, the settlement thus far has been
13 overwhelmingly approved by the class members, as there are no objections and no Class
14 Member requested exclusion.

15
16 **1. The Settlement Is the Product of Arm's-Length, Informed Negotiations**

17
18 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
19 was reached following arm's-length negotiations presided over by Steve Mehta, Esq., a highly
20 respected and well-known mediator with extensive experience mediating wage and hour class
21 actions. [Trenner Decl., ¶ 7.] Moreover, Plaintiff and his counsel were well-informed about the
22 facts and the law, and counsel Zachary Crosner, Jamie Serb, and Nikki Trenner have years of
23 litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-
24 qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter.
25 [Trenner Decl., ¶¶ 25-30.] Defendant McCoy likewise was represented by highly-qualified and
26 experienced defense counsel. Both sides advocated vigorously for their clients, and nothing
27 was "left on the table."

28 ///

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

2 The settlement was well-received by the class. As of the filing of this motion, no
3 objections have been filed, and no Class Member has requested exclusion out of 164 settlement
4 class members. [Salinas Decl., ¶¶ 8-9.] As many courts recognize, class member reaction to the
5 settlement is one of the most important factors to consider in determining if final approval should
6 be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also
7 In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) (“It is well-
8 settled that the reaction of the class to the settlement is perhaps the most significant factor to be
9 weighed in considering its adequacy”) (internal quotation marks omitted).

10 **3. The Proposed Settlement Meets the Dunk and Kullar Factors**
11 **and is within the Range of Reasonableness**

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

20 Prior to the mediation, the parties engaged in both formal and informal discovery to
21 facilitate settlement discussions. Plaintiff reviewed documents and information regarding McCoy’s
22 payroll practices, a random sampling of pay stubs and time records from class members, a class
23 list, applicable compensation plans and expense reimbursement plans, etc., and information from
24 Defendant regarding class size and breakdown, work weeks/pay periods, rates of pay, and other
25 information used to formulate a damages model. Plaintiff then had that information analyzed by a
26 consulting expert to assist in determining potential violation rates and other data used to formulate
27 a damages model. Plaintiff’s counsel are confident they obtained sufficient information to
28 understand the law and facts of this case and make an informed decision regarding the proposed

1 settlement and whether it is fair and reasonable. [Trenner Decl., ¶¶ 6, 13.]

2 Using that information, Plaintiff estimated McCoy's potential exposure on the class claims
3 at approximately **\$2.336** million, including about \$1,337,000 on the unpaid wage/off the clock
4 claim, \$48,700 on the unreimbursed expense claim, \$448,000 on the wage statement claims, and
5 \$502,875 on the waiting time penalty claims. [Trenner Decl., ¶ 14.] Plaintiff substantially
6 discounted these numbers, however, in light of Defendant's many defenses to both class
7 certification and the merits.

8 First, on the unpaid wage claims, Plaintiff first contends McCoy off the clock as they were
9 forced to clock out of Defendant's timekeeping system while waiting, loading, and offloading cargo
10 to prevent running out of their daily hours of service under federal DOT regulations. Plaintiff
11 further alleges Defendant failed to pay for what amounted to "on duty" meal periods. For example,
12 Plaintiff claims McCoy's "vessel security" policies mandate that drivers watch over their
13 equipment at all times during their shifts, and that other policies requiring that employees stay on
14 schedule and make all deliveries on time likewise caused meal periods to be "on duty." On the other
15 hand, McCoy argued its policies strictly prohibited any off the clock work, and that its policies
16 allowed employees sufficient time to complete all duties within the allocated hours of service, and
17 to take a full, off duty lunch break. Thus, per McCoy, any alleged off the clock work would have
18 been against company policy, done without the company's knowledge or approval, and therefore
19 not compensable. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer
20 must have actual or constructive knowledge of the off the clock work). Defendant further argued
21 the issue is not certifiable since it would require innumerable individualized inquiries to determine
22 the reasons for any alleged off the clock work and if it was compensable. [Trenner Decl., ¶ 15.]

23 The claims for unreimbursed business expenses under Labor Code § 2802 revolved around
24 Plaintiff's allegations that McCoy required its non-exempt employees to use their personal cell
25 phones for business purposes including, but not limited to communicating with supervisors while
26 on duty, and downloading a company app used to conduct their duties. Cochran v. Schwan's Home
27 Services, Inc. (2014) 228 Cal. App. 4th 1137, 1144 (2014) ("[T]o be in compliance with section
28 2802, the employer must pay some reasonable percentage of the employee's cell phone bill."). In

1 response, Defendant argued there was no need for use of personal phones for work purposes, and
2 that any such use would have been purely for personal convenience. Thus, per McCoy, use of
3 personal phones wasn't necessary and therefore not reimbursable. [Trenner Decl., ¶ 16.]

4 Plaintiff's claims for penalties under Labor Code §§ 203 and 226 are derivative of the
5 underlying unpaid minimum and overtime wage claims and, accordingly, they would essentially
6 rise or fall with Plaintiff's success or failure on his primary claims. Further, Plaintiff had to account
7 for the discretionary nature of such awards and the "good faith" and other defenses available to
8 Defendant. Amaral v. Cintas Corp. No. 2,163 Cal.App.4th 1157, 1203-4 (2008) (employer did not
9 willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits
10 for failing to pay living wages). [Trenner Decl., ¶ 17.]

11 On the PAGA claims, the alleged aggrieved employees theoretically are entitled to penalties
12 totaling about \$1.8 million should Plaintiff prevail on all claims, establish violations of the multiple
13 Labor Code sections at issue, and secure the maximum penalty for eligible pay periods. [Trenner
14 Decl., ¶ 18.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on
15 Defendant's various defenses on the merits and also accounted for the Court's wide discretion to
16 reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington
17 v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of \$5 per pay period
18 after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions
19 (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial).
20 Accordingly, the Parties allocated \$10,000 to PAGA penalties.

21 Plaintiff submits this amount is reasonable under the circumstances and in line with
22 comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v.
23 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
24 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
25 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
26 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
27 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
28 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,

1 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
2 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
3 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
4 not objected to the settlement.

5 The settlement obviates the significant risk that this Court may find any kind of class
6 resolution unachievable or might deny certification of all or some of Plaintiff's claims.
7 Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued
8 litigation would be expensive as the parties pursued merits discovery, a probable motion to
9 decertify, as well as trial and possible appeals, and would substantially delay any recovery by the
10 class with no assurance of recovering significantly more than the proposed settlement. Overall,
11 while Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each
12 cause of action. Plaintiff also recognizes proving the amount of wages and penalties due each
13 Class Member would be an expensive and uncertain proposition. [Trenner Decl., ¶ 19.]

14 Plaintiff and counsel discounted the value of the class claims consistent with the risks
15 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
16 benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and
17 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
18 was in the best interests of the class. The overall \$217,803.39 recovery represents a significant
19 percentage of Defendant's potential exposure and, given the risks addressed above, a total
20 recovery for the class of \$217,803.19, which will result in average award of some \$615 per class
21 member, is a significant result well within the range of reasonableness considering all potential
22 outcomes, and it will provide direct monetary awards to all Class Members without further delay.
23 [Trenner Decl., ¶ 20.]

24 Importantly, the mere fact that a settlement does not provide the same recovery as might
25 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
26 adequate. Wershba, 91 Cal.App.4th at 246, 250 ("even if the relief offered by the proposed
27 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
28 this is no bar to a class settlement because the public interest may indeed be served by a voluntary

1 settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven
2 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact
3 that a proposed settlement may amount to only a fraction of the potential recovery does not, in
4 and of itself, mean that the proposed settlement is grossly inadequate and should be
5 disapproved”); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question
6 whether a settlement is fundamentally fair . . . is different from the question whether the
7 settlement is perfect in the estimation of the reviewing court”). Importantly as well, the proposed
8 settlement is non-reversionary and will provide benefits to the Class Members without a claims
9 process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action
10 Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [www.fjc.gov/sites/](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
11 [default/files/2012/ClassGd3.pdf](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf) (reversionary provisions and/or cumbersome claims process may
12 indicate lack of fairness). Plaintiff and her counsel submit the settlement is within the “range of
13 reasonableness,” and is fair and adequate for the Class.

14 **V. SETTLEMENT ADMINISTRATION COSTS**

15 The settlement provides for a payment to Phoenix for its services as the Settlement
16 Administrator. As set forth in the Declaration of Jarrod Salinas, Phoenix has performed and will
17 continue to perform its required duties through final distribution of the settlement funds and
18 incurred \$7,500 in fees and expenses. [Salinas Decl., ¶ 17.] Accordingly, Plaintiff respectfully
19 requests the Court approve payment of \$7,500 to Phoenix from the GSA. [Trenner Decl., ¶ 21.]

20 **VI. PLAINTIFF’S ENHANCEMENT AWARD**

21 A modest incentive award for Plaintiff is appropriate under applicable law. See Staton v.
22 Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service
23 and incentive payments ranging from \$2,000 to \$25,000). He devoted time and resources to the
24 litigation, provided documents, assisted Class Counsel with investigating the claims asserted and
25 in preparing for mediation. The service payment provided to Plaintiff as the class representatives is
26 typical in class action cases and reasonable. Rodriguez v. W Publ’g Corp. (9th Cir. 2009) 563 F.3d
27 948, 958-59 (incentive awards are “intended to compensate class representatives for work done on
28 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,

1 and, sometimes, to recognize their willingness to act as a private attorney general.”). Defendant
2 will not oppose a request for an enhancement award to Plaintiff of not more than \$10,000.00 in
3 recognition of his time spent on this matter, the risks he undertook on behalf of the class, the benefit
4 conferred to the class, and for providing a full general release of claims, all as addressed in his
5 declaration filed herewith. If the Court approves less than the above amount, the difference will
6 remain in the Net Settlement Amount for distribution to the Participating Class Members. [Trenner
7 Decl., ¶ 22.]

8 **VII. ATTORNEY’S FEES AND COSTS**

9 **A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be** 10 **Approved**

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

22 As addressed in detail above, at the time the parties reached the tentative settlement
23 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
24 some or all the claims would not be certified for class treatment, as Defendant had strong
25 arguments that its compensation policies were legal and properly compensated the class
26 members, that the class might not be sufficiently numerous, and that many putative class
27 members previously waived the claims at issue. Even if Plaintiff certified some or all of the
28 claims and ultimately prevailed on the merits, it undoubtedly would have taken several years

1 to realize any recovery while they pursued class certification, trial, and an almost certain
2 appeal. [Trenner Decl., ¶¶ 15-20.]

3 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to
4 obtain, and the settlement provides substantial cash payments to Class Members, with an
5 average award of about \$615, and with a maximum award of over \$1,600. Importantly as
6 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the
7 filing of this motion, there are no objections to the settlement and no opt outs. [Salinas Decl.,
8 ¶¶ 8-9.]

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

10 The United States Supreme Court has ruled the parties to a class action properly may
11 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
12 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
13 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
14 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
15 should not result in a second major litigation. Ideally, of course, litigants will settle the
16 amount of a fee." The United States Supreme Court has reemphasized this policy and further
17 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
18 (1984) 465 U.S. 886, 902 n.19.

19 As part of the Settlement, McCoy agreed not to object to an award of no more than
20 1/3 of the GSA (now escalated) for attorney's fees, or \$72,601.13, and up to \$20,000 in
21 reimbursement for litigation costs and expenses (only \$16,770.19 is requested). Such a fee
22 is commensurate with what the market would provide for similar services and the Court
23 therefore can most certainly enforce the agreement. As California's Court of Appeal has
24 instructed:

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

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

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

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

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

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

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

19 Indeed, both California and federal courts have long recognized an appropriate
20 method for determining the award of attorney's fees is based on a percentage of the total
21 value of benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20
22 Cal.3d 25, 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air
23 West, Inc. (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the
24 common fund recovered operates to "spread litigation costs proportionately among all the
25 beneficiaries so that the active beneficiary does not bear the entire burden alone." Vincent,
26 557 F.2d at 769.

27 In determining a reasonable common fund fee award, courts should also consider the
28 fact that fees serve as an economic incentive for lawyers to bring class action litigation to

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

7 Here, Class Counsel seek a fee award for their successful prosecution and resolution
8 of this action of no more than one-third of the total amount recovered by the Class via the
9 lawsuit, or \$72,601.13. The percentage requested is justified for the reasons set forth further
10 below, and comports with fee awards calculated on a percentage-of-the-benefit basis.
11 Indeed, review of class action settlements shows that courts have historically awarded fees in
12 the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner
13 Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that
14 percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on
15 Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a
16 reasonable fee award from a common fund in order to assure that the fees do not consume a
17 disproportionate part of the recovery obtained for the class, although somewhat larger
18 percentages are not unprecedented.").

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

20 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
21 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for
22 bringing an objective measure of the work performed into the calculation of a reasonable
23 attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 142.3 hours of time on
24 this matter, resulting in a modest and very reasonable lodestar of \$101,685.

25 As is fully detailed in the Trenner Declaration, Class Counsel's efforts included:
26 (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including
27 legal research, obtaining Plaintiff's employment records, research into similar claims and claims
28 against other employers in the same industry, and attempts to locate and contact other FMA

1 employees; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related
2 documents; (4) case management, including communications with defense counsel, meeting and
3 conferring/preparing case management statements, etc.; (5) lengthy discussions with defense
4 counsel regarding settlement/mediation and informal discovery needed for meaningful settlement
5 discussions; (6) engaging in substantial informal discovery, including propounding informal
6 discovery “requests” and reviewing documents and other information produced; (7) drafting a
7 mediation brief and accompanying damages model after review and analysis of defendant’s
8 informal discovery production; (8) attending an all-day mediation; (9) negotiating and drafting
9 the settlement agreement and related documents; (10) drafting the amended complaint;
10 (11) drafting the motion for preliminary approval and supplemental papers re: changing the notice
11 period; (12) administration of the settlement, communications with the Settlement Administrator
12 and settlement class members; (13) drafting the motion for final approval and motion for
13 attorney’s fees, and attending the final approval hearing; and (14) extensive communications with
14 the Plaintiff regarding case status, case investigation and document review, mediation, and
15 settlement terms. Additionally, Class Counsel will incur additional time to attend the final
16 approval hearing and following final approval to, inter alia, respond to class member inquiries,
17 work with the Settlement Administrator on the distribution of settlement funds, and on the
18 compliance hearing. [Trenner Decl., ¶ 24, Exh. 2.]

19 In pursuing this matter, Class Counsel incurred total attorney’s fees of \$101,685 and
20 the lodestar is based on a very reasonable number of hours worked to litigate this matter to a
21 successful conclusion (142.3 attorney hours), and the requested attorney hourly rates are
22 reasonable and comport with hourly rates charged by other attorneys with similar experience in
23 this practice area in California. [Trenner Decl., ¶¶ 25-38.] On a lodestar basis, the fee request of
24 \$72,601.13 results in a fee request that is less than the actual final lodestar, and thus there is
25 no request for a lodestar enhancement. Class Counsel submits effectively operates to show
26 that the percentage fee request is reasonable considering the actual fees requested are slightly
27 lower than the value of the services performed when valued via traditional hourly billing.

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1 recovery does not per se render the settlement inadequate or unfair." In re Omnivision
2 Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

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

4 At the time of filing the complaint, Class Counsel recognized that they would have to
5 expend a substantial amount of time and advance significant costs to prosecute a statewide
6 class action suit with no guarantee of compensation or reimbursement, in the hope of
7 prevailing against a sophisticated company represented by first-rate attorneys. Despite
8 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
9 of class certification and the ability to prove class-wide and individual damages. In light of
10 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant
11 would dig in and attempt to bury their small firm in work. Given the small size of Class
12 Counsel's firm, not receiving any compensation for several years while simultaneously
13 advancing litigation costs posed considerable risk and difficulty. [Trenner Decl., ¶¶ 39-40.]

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

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

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

24 There is a substantial difference between the risk assumed by attorneys being paid
25 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
26 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d
27 1249, 1256. The attorney working on a contingent basis can only log hours while
28 working without pay towards a result that will hopefully entitle him to a market fee

1 considering the risk and other factors of the undertaking. Id. at 1257. Otherwise, the
2 contingent fee attorney receives nothing. Id. In this case, Class Counsel subjected
3 themselves to this risk in this all or nothing contingent fee case wherein the necessity
4 and financial burden of private enforcement makes the requested award appropriate.

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

14 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
15 the investment of unnecessary time in a case, and the adverse resolution of any one of several
16 difficult issues present in this matter could have doomed the entire effort. As discussed, the
17 attorney's fees in this case were not only contingent but fairly risky, and there was always a
18 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.
19 [Trenner Decl., ¶¶ 39-40.] Accordingly, the contingent nature of the fee and the financial
20 burdens on Class Counsel and Plaintiff also support the fee requested.

21 **5. Awards in Other Cases**

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

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

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

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

18 Per the Trenner Declaration, Class Counsel incurred a total of \$16,770.19 in
19 expenses in connection with this matter. These expenses include amounts paid for court
20 filing fees, service of process, postage, expert fees, and mediation fees, all of which are
21 costs normally billed to and paid by the client. These costs were reasonably incurred in
22 the prosecution of this matter, and should be reimbursed in full. Plaintiff respectfully
23 requests that the Court authorize reimbursement of counsel's costs in the amount of
24 \$16,770.19. [Trenner Decl., ¶¶ 41-42.]

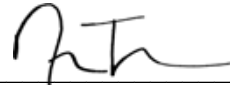
25 **VIII. CONCLUSION**

26 For all the foregoing reasons, Plaintiff Stanley Glenn respectfully requests that the Court
27 grant this motion and grant final approval of the proposed class action settlement and approve the
28 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of

1 the Settlement Administrator's fees and expenses, approve the requested class representative
2 enhancement payment, approve the award of attorney's fees and costs as requested, and enter
3 judgment in this action. Finally, Plaintiff request the Court set a final compliance hearing for
4 February 20, 2026, or a later date convenient for the Court.

5
6 Dated: January 21, 2025

CROSNER LEGAL, P.C.

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9 _____
10 Nikki Trenner
11 Zachary Crosner
12 Jamie Serb
13 Attorneys for Plaintiff STANLEY GLENN
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