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SUPERIOR COURT OF THE STATE CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

OSWALDO OCAMPO MONTES, as an individual and on behalf of all employees similarly situated,

Plaintiff,

v.

JEFF CARPENTER., a California Corporation; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. CVRI2302670

Assigned for All Purposes to:
Hon. Harold W. Hopp, Dept. 1

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[*Filed concurrently with Declaration of Jose R. Garay; Declaration of Oswaldo Ocampo Montes; Declaration of Yami Burns; and [Proposed] Order*]

Date: July 16, 2025
Time: 8:30 a.m.
Dept.: 1

Complaint Filed: May 23, 2023
FAC Filed: November 2, 2023

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

PLEASE TAKE NOTICE that on July 10, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 1 of the above-captioned Court, located at 4050 Main Street, Riverside, CA 92501, Plaintiff Oswaldo Ocampo Montes ("Plaintiff") will and hereby does move this Court for an order:

1. Granting final approval of the Joint Stipulation of Class and PAGA Representative Action Settlement ("Settlement" or "Agreement") in the above-captioned case;

2. Awarding Class Counsel their attorneys' fees in the amount of $71,666.67 and reimbursement of their litigation costs in the amount of $17,494.05

3. Awarding the Class Representative Enhancement to Plaintiff Oswaldo Ocampo Montes in the amount of $7,500.00;

4. Awarding $6000.00 to Phoenix Class Action Administration Solutions for its Settlement Administration costs;

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which requires approval by the Court of a class action settlement. The basis for this Motion is that the proposed settlement is fair, adequate, and reasonable and satisfies all criteria for final approval under California law.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declaration of Class Counsel Jose Garay, the Declaration of Plaintiff Oswaldo Ocampo Montes, the Declaration of Yami Burns, the [Proposed] Order, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Dated: June 23, 2025

JOSE GARAY, APLC

Jose R. Garay
Attorneys for Plaintiff Oswaldo Ocampo Montes

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Oswaldo Ocampo Montes' ("Plaintiff" or "Class Representative") Motion for Final Approval of Class Action Settlement ("Motion") seeks final approval of a proposed non-reversionary Class Action and Private Attorneys General Act of 2004 ("PAGA") Settlement. This Court preliminarily approved the settlement on April 28, 2025, after receiving supplemental briefing, including the Revised Joint Stipulation of Class and PAGA Representative Action Settlement ("Settlement") and Revised Notice of Proposed Class Action Settlement. The Settlement will release claims that Defendant Jeff Carpenter, Inc. ("Defendant") failed to pay wages for all hours worked (including overtime), provide meal periods and authorize and permit rest breaks in the manner legally required, reimburse business expenses, provide accurate itemized wage statements, and pay all wages due upon termination to Plaintiff and all persons who were employed as non-exempt hourly employees in California ("Class" or "Class Members") by Defendant from May 23, 2019 through August 13, 2024 ("Class Period"). The Settlement will also release claims of the PAGA Employees, i.e., all Class Members that worked at any time from May 24, 2022 through August 13, 2024 (the "PAGA Period").

Plaintiff conducted informal discovery and engaged an expert to analyze damages issues. The Parties engaged in a full day mediation with an experienced mediator, Jeffrey Fuchsman and subsequent negotiations resulted in a settlement of $215,000 ("Gross Settlement Amount"). The Gross Settlement Amount will be distributed as follows:

a. Approximately $101,089.28 will be distributed to 83 Class Members who did not opt out or object or dispute their prorated amount of the Settlement ("Participating Class Members");

b. Three thousand seventy fifty dollars ($3,750) (25% of PAGA allocation) of the amount allocated toward PAGA penalties will be paid to Aggrieved Employees;

c. Class Counsel's attorneys' fees in the amount of up to $71,666.67;

d. Class Counsel's litigation costs in the amount of up to $17,494.05 with the remainder of

$2,505.95 to be redistributed to participating class members of the $20,000.00 requested and approved at the preliminary hearing;

e. Class Representative Enhancement to Plaintiff Oswaldo Ocampo Montes in the amount of $7,500.00;

f. Settlement Administration costs of $6,000.00; and

g. Payment to the California Labor and Workforce Development Agency ("LWDA") in the amount of $11,250.00 for PAGA penalties of the $15,000.00 PAGA allocation.

The Settlement is a product of diligent efforts and extensive arms' length negotiations by Class Counsel to obtain the best possible result for the Class. By resolving this matter now, Class Members will receive a guaranteed recovery without risk of nonpayment, delay, or an adverse judgment at trial. In response to the Notice of Proposed Class Action Settlement and Exclusion Form ("Notice Packet"), none of the 83 Class Members objected and no Class Members, or 0% of the Class requested exclusion from the Settlement. Since the Settlement did not require Class Members to submit a claim form, all Participating Class Members will receive their share of the Settlement. The Participating Class Members will receive an average payment of approximately $1,142.57, with the highest payout reaching approximately $3,195.84, and the estimated lowest payment being $11.71 to a Class Member.

In light of the Class' favorable response, the facts and law set forth below, and the papers submitted in support of preliminary approval, Plaintiff respectfully requests that the Court enter an order that (1) grants final approval of the Settlement; (2) enters final judgment; (3) orders distribution of the proportionate shares of the Settlement to Class Members pursuant to the terms of the Settlement; and (4) approves payments for attorneys' fees, litigation costs, Plaintiff's Enhancement payment, Settlement Administration costs, and payment to the LWDA, as requested herein.

II. THE SETTLEMENT SATISFIES FINAL APPROVAL REQUIREMENTS

California courts consider whether a class action settlement is "fair, adequate and reasonable" when deciding whether to grant final approval. *Wershba v. AppleComputer, Inc.*, 91 Cal. App. 4th 224, 244-45 (2004); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). A settlement is "fair, adequate and reasonable" and therefore merits final approval when "the interests of the class are better served by the settlement than by further litigation." *Manual for Complex Litigation* (4th ed. 2008) § 21.61, 462. "[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, 48 Cal. App. 4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.

A. The Court Found a Presumption of Fairness Exists at Preliminary Approval.

On April 28, 2025, the Court granted Plaintiff's Motion for Preliminary Approval of Class Action and Private Attorneys General Act of 2004 ("PAGA") Settlement based on supplemental briefing and a revised Settlement Agreement and Notice Packet. *See* Declaration of Jose R. Garay in Support of Plaintiff's Motion for Final Approval of Settlement ("Garay Decl."), Ex. A (Order Granting Motion for Preliminary Approval of Class and PAGA Representative Action Settlement ("Preliminary Approval Order")). The Court appointed Plaintiff Oswaldo Ocampo Montes as the Class Representative, Jose Garay, APLC as Class Counsel, Phoenix Class Action Administration Solutions as the Settlement Administrator, approved the proposed notice plan, and directed that the Notice Packet be mailed to the Class. (*See* Preliminary Approval Order.)

At preliminary approval, Plaintiff presented evidence that the Settlement is entitled to a presumption of fairness because (1) the Settlement was reached through arms-length bargaining after a full day mediation session and subsequent negotiations between the Parties, (2) Plaintiff conducted informal discovery and exchange of documents between Plaintiff and Defendant, and (3) Plaintiff's counsel are sufficiently experienced to be appointed Class Counsel. *See id*. At this time, Plaintiff is pleased to report that the last factor, which examines the percentage of objectors has been satisfied: no Class Members objected and no class members opted out or disputed their prorated amount of the Settlement. *See Dunk*, 48 Cal. App. 4th at 1802. Accordingly, this Court can presume that the Settlement is worthy of final approval.

B. Additional Factors Support Final Approval.

A court's inquiry at final approval can include several other factors, including: (1) the strength of the plaintiff's case weighed against the risk, expense, complexity and likely duration of further litigation as well as the risk of maintaining class action status through trial, (2) the amount offered in settlement, (3) the extent of discovery completed and the stage of the proceedings when settlement was reached, (4) the experience and views of counsel, (5) the presence of a governmental participant, and (6) the reaction of class members. *Wershba*, 91 Cal. App. 4th at 244-45.

1. The Strength of Plaintiff's Case Weighed Against the Risks, Expense, Complexity and Likely Duration of Further Litigation, Including the Risk of Maintaining Class Action Status Through Trial.

A dispositive order or final judgment regarding liability and/or damages entered by the court rarely signals the end of a wage and hour class action. For example, class action defendants may seek a writ of mandate for interlocutory relief from an order granting class certification. *See* Code Civ. Proc. §904.1; *In re Cipro Cases I and II*, 121 Cal. App. 4th 402, 409 (2004). Additionally, the losing party can appeal the liability and/or damages issues. *See, e.g., Chau v. Starbucks Corp.*, 174 Cal. App. 4th 688 (2009) (appellate court reversed $86 million restitution award to a certified class of hourly employees); *Augustus v. ABM Security Services, Inc*., 233 Cal. App. 4th 1065 (Cal. App. 2d Dist. 2014) (appellate court reversed $89 million judgment in favor of 14,788 class members). To assess the inherent risks, the Court must weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation. *Dunk*, 48 Cal. App. 4th at 1801-02. Here, based on review of documentary evidence and data produced by Defendant through informal discovery, and a damage analysis prepared by Plaintiff's expert, Plaintiff's Counsel weighed the potential value of the class claims being released by the proposed Settlement against the likelihood of prevailing at class certification and trial. (See Preliminary Hearing Motion Garay Decl., ¶¶ 5, 6, 10, 11, 15.)

Plaintiff alleged that Defendant failed to pay all earned wages, including minimum and overtime wages, failed to provide meal periods and rest breaks, and failed to reimburse business expenses, as well as derivative penalties. Plaintiff evaluated the class claims taking into consideration the significant resources required for trial, and the risk that a jury might find against them. (*Id*.) While Plaintiff believes this is a strong case for certification, there were significant risks and expenses associated with class certification and liability proceedings, including the level of discretion given to trial courts in determining whether to certify a class, which could result in no recovery for Class Members. (Preliminary Approval Motion Garay Decl. ¶ 17.) As the California Supreme Court ruled in *Sav-On v. Superior Court*, 34 Cal. 4th 319 (2004), class certification is always a matter of the trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions with respect to certification of wage and hour claims.[1]

The risk here was amplified by Defendant's argument that Plaintiff signed an arbitration agreement that would likely require him to pursue his claims in individual arbitration and dismiss the class action claims in this case. Garay Decl., ¶ 15, p. 18. As to specific claims, while Plaintiff's strongest claims were the failure to pay regular time wages, overtime and premiums for meal and rest periods. For the meal period claim, Defendant did not record the actual meal period time but argued employees did in fact take meal periods, and showed that it had written policies and implemented meal period waivers during the Class Period, and Plaintiff's claim that meal periods were restricted to the work site would have been based on anecdotal evidence that was subject to individualized inquiries. (*Id.*, ¶ 13.) As for the rest period claim, Plaintiff would have had to rely on

[1] *See, e.g.*, *Harris v. Superior Court*, 154 Cal. App. 4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal. App. 4th 1440 (2007) (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*, 144 Cal. App. 4th 121 (2006) (reversing denial of certification); *Dunbar v. Albertson's Inc*., 141 Cal. App. 4th 1422 (2006) (affirming denial of certification).

witness testimony since there are no records pertaining to rest breaks, and Defendant could have refuted Plaintiff's testimony with its own testimonial evidence, and individual inquiries would be required to assess which employees failed to take all required rest periods. *Id.*, ¶ 17, The reimbursement claim was also susceptible to individualized inquiries since the amount and cost of tools that were purchased, and whether said tools were necessary differed depending on the job title, department, supervisor, and/or individual. *Id.*

Additionally, Defendant argued that Plaintiff could not prove that Defendant "willfully" failed to pay wages in order to obtain waiting time penalties under Labor Code section 203 and that good faith disputes existed as to Plaintiff's underlying claims. *Id.* Defendant further argued its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show Class Members suffered injuries due to wage statement violations, as required by Labor Code Section 226. *Id.*

2. The Amount Offered in Settlement.

The Settlement provides for a Gross Settlement Amount of $215,000 for 83 Class Members—none opted out, objected or disputed the prorated amount to via the class settlement. Settlement. (*See* Yami Burns, Phoenix Administrator ("Yami Decl.") Decl. ¶¶ 5 – 11.)
The settlement fund pays Class Counsel for their attorneys' fees and costs, Plaintiff for his contributions to the case, the Settlement Administrator for its expenses in administering the Settlement, and the LWDA for the PAGA claims, leaving a Net Settlement Fund ("NSF") of approximately $101,098.28 and a PAGA Settlement Payment of $3,750.00 Burns Decl., ¶ 12. The Settlement is non-reversionary and the entire NSF will be paid to Participating Class Members; the entire PAGA Settlement Payment will be distributed to all Class Members, regardless of whether or not they opted out of the Settlement; all applicable payroll taxes customarily paid by employers will be paid by Defendant separate from the Gross Settlement Amount. (Burns Decl. ¶ 6 – 16.)

Once the Court grants final approval, the NSF will be distributed to all Participating Class Members, and the PAGA Settlement Payment will be distributed to all Class Members. Each

Participating Class Member is entitled to a pro-rata payment from the NSF based on the Participating Class Member's number of days of employment in an hourly non-exempt position during the Class Period compared to the total number of days of employment during the Class Period credited to all Participating Class Members. The Participating Class Members will receive an average payment of approximately $1,142.57, with the highest payout reaching approximately $3,195.84, and the estimated lowest payment being $11.71 to a Class Member. The average net recovery here is quite significant compared to other wage and hour class action settlements on behalf of non-exempt employees. *See, e.g., Palencia v. 99 Cents Only Stores,* No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately $80); *Doty v. Costco Wholesale Corp.,* Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately $65); *Lim v. Victoria's Secret Stores, Inc.,* Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately $35); *Gomez* v. *Amadeus Salon, Inc.,* Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately $20).

Accordingly, the amount offered in settlement provides adequate relief, especially in light of the potential risks associated with continued litigation.

3. The Extent of Discovery Completed and the Stage of Proceedings.

Class Counsel thoroughly investigated the Class Members' claims, applicable law, and the potential defenses, including the purported arbitration agreement signed by Plaintiff. Specifically, Class Counsel evaluated the class claims using Defendant's data and documents produced through informal discovery including policies, procedures, and class member time and payroll records, and engaged an expert to perform a damage analysis. (*See* Preliminary Hearing Garay Decl., ¶ 17, p.19.) On May 15, 2024, the Parties attended a full day of mediation with an experienced mediator, Jeffrey Fuchsman serving as mediator. (*Id.* ¶ 6.) On the same day, after subsequent negotiations, the Parties agreed in principle to settle the class and PAGA claims and spent the next few months finalizing the terms of the long-form Settlement Agreement. The Settlement was the product of mediation with an experienced mediator and adversarial, arms-length negotiations over the terms of the Settlement. *Id.*

Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. *Id*.

The Settlement before the Court came only after the case was fully investigated by counsel, as set forth above. Thus, the litigation has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 617 (N.D. Cal. 1979).

4. The Experience and Views of Counsel.

Plaintiff is represented by Jose Garay, APLC ("Class Counsel"). Class Counsel has extensive experience in wage and hour class action litigation, and is currently serving as plaintiff's counsel in numerous other wage and hour class action cases pending in state and/or federal court. (Garay Decl., ¶¶ 14 -27.) In the instant case, Class Counsel negotiated a settlement that it considered fair, adequate, and reasonable, based on their experience litigating these types of cases. (*Id*.)

5. The Presence of a Governmental Participant.

The LWDA is arguably a governmental participant in the Settlement. Plaintiff gave notice of his PAGA claims as required under PAGA on May 24, 2023. The Settlement includes payment of $11,250 (75% of $15,000) in PAGA penalties to the LWDA, which the Settlement Administrator will make after final approval of the Settlement. The remaining 25% of the amount allocated to PAGA penalties will be paid to all Class Members, regardless of whether or not they opted out of the Settlement. *Id*.; Burns Decl. ¶14 The Settlement allocates a fair amount to the PAGA claims, especially since the circumstances of the settlement, rather than the amount allocated to PAGA claims, determine whether a PAGA settlement is appropriate. *See Nordstrom Com'n Cases,* 186 Cal.App.4th 576, 589 (2010). Here, weighing the Class Members' best interest and considering that the non-PAGA claims are the real gravamen of the lawsuit, Plaintiff found that the $15,000 allocated to the PAGA claims was sufficient to address those claims. *Id.* Further, Plaintiff has provided notice to the LWDA of the Settlement as required by statute, and the LWDA has not objected to or commented on the proposed Settlement or the amount allocated to PAGA penalties. (Garay Decl., ¶ 5, Ex. D.)

6. The Reaction of Class Members.

A court may properly infer that a class action settlement is fair, adequate and reasonable when few class members object to or opt out of it. *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 51 (2000). Here, 83 Participating Class Members will receive the benefits of the entire NSF since no funds will revert to Defendant. *See* Settlement Agreement,

Accordingly, the Class Members' positive reaction to the Settlement supports the conclusion that the Settlement is fair, adequate and reasonable.

III. THE NOTICE PROCEDURE SATISFIES DUE PROCESS REQUIREMENTS.

The Court approved the method of providing notice to Class Members when it granted preliminary approval of the Settlement. After conducting a search utilizing the National Change of Address Database of the U.S. Postal Service, Phoenix mailed the Notice Packet to all Class Members on May 30, 2025. (Burns Decl., ¶ 5.) The Notice Packet advised Class Members of (1) the Settlement terms, (2) their rights to participate in, opt out of, or object to the Settlement, (3) the methods and deadlines by which to perform any of these acts, (4) the location and date of the Final Approval Hearing and the methods by which a Class Member could be heard; and (5) each Class Member's individualized information used to calculate his or her share of the Settlement and how it would be calculated, and the estimated amount of his or her individual settlement payment. (Burns Decl., Ex. B).

After the Notice Packet was mailed, Phoenix received 83 Notice Packets which were returned as undeliverable, 4 of which were returned with a forwarding address. (Burns Decl., ¶ 4.) Phoenix performed a skip trace and obtained 4 updated addresses. *Id*. Phoenix then re-mailed the 4 Notice Packets. (*Id.)* This mailing provided the best practicable means of notice to the Class Members. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-76 (1974) (individual notice must be sent to all class members who can be identified through reasonable efforts); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"). The Class Members were given 45 days to respond to the Notice Packet. A claim form was not required for Class Members to receive their share of the Settlement.

IV. THE REQUESTED ATTORNEYS' FEES AND COSTS SHOULD BE APPROVED BY THE COURT.

California courts recognize two standard methods for calculating attorney fee awards in approving class action settlements. The far more prevalent "percentage of recovery" (also known as the "common fund") method calculates attorneys' fees based on a percentage of the common benefit bestowed upon the class. The "lodestar-plus-multiplier" method uses class counsel's "lodestar" as a basis – determined by multiplying the hours counsel expended by their hourly rates – which the Court may then enhance by a multiplier. *See Laffitte v. Robert Half Int'l, Inc.*, 1 Cal. 5th 480, 489 (2016) (recognizing both the "percentage of recovery" and "lodestar/multiplier" methods). Class Counsel seeks an award of attorneys' fees in the amount of $71,666.67 or one-third of the Gross Settlement Amount. Class Counsel's fee request is reasonable under either of these methods, as explained below.

A. The Requested Fee Award Calculated as a Percentage of the Common Fund is Fair and Reasonable.

Both California and federal courts have recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. *Wershba,* 91 Cal.App.4th at 254. The common fund theory is grounded on the historic power of equity to permit the trustee of a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees, from the fund or property itself or directly from the other parties enjoying the benefit. *Serrano v. Priest,* 20 Cal.3d 25, 35 (1977). In

Laffitte, the California Supreme Court held that it is not an abuse of discretion for a trial court to utilize the percentage method for calculating an attorneys' fee award in a common fund case. *See Laffitte*, 1 Cal. 5th at 503; *see also Serrano*, 20 Cal.3d at 35-40; *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995). In so doing, the Court rejected the appellant's arguments against use of the percentage method, pointing out that the method has widespread acceptance in courts throughout the country. *Laffitte*, 1 Cal. 5th at 485-486. The Court held "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Id*. at 503. Explaining that the percentage method "is a valuable tool" for trial courts to calculate attorneys' fees, the Court extolled "[t]he recognized advantages" of the method, such as "ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation." *Id*. (citations omitted).

In applying the common fund doctrine, California courts routinely award attorneys' fees equaling one-third of the common fund's total potential value. *See*, *e.g.*, *Laffitte v. Robert Half Int'l, Inc.*, 231 Cal. App. 4th 860, 878 (2014) ("trial court's use of a percentage of 33 1/3 percent of the common fund is consistent with [] awards in other class action lawsuits" and "studies show that . . . fee awards in class actions average around one-third of the recovery"), *aff'd by Laffitte*, 1 Cal. 5th at 489; *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) ("Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that a one-third fee is consistent with market rates). Thirty-three percent of the common fund is also reasonable because it best reflects the market rate for contingency fees. *See Lealao,* 82 Cal. App.

4th at 47 (“attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace”). Fees representing one-third of the recovery reflect the rate negotiated in “typical contingency fee agreements [which] provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 U.S. Dist. LEXIS 123546, *55-57 (C.D. Cal. July 21, 2008) (citing an academic study collecting contingency fee agreements and finding that a fee award constituting 34% of the fund is reasonable on that basis). Because the negotiated fee structure reflects the marketplace, it is reasonable and should be approved.

Here, Class Counsel efficiently litigated this matter, making the entire Net Settlement Fund available to Class Members with no reversion to Defendant, and making Defendant’s payment of employer-side taxes separate from the Gross Settlement Amount. Since the Settlement did not require Class Members to submit a claim form, all Participating Class Members will receive their share of the Settlement. The Participating Class Members will receive an average payment of approximately $1,142.57, with the highest payout reaching approximately $3,195.84, and the estimated lowest payment being $11.71 to a Class Member.

These amounts represent a fair recovery for the Class in a case where they did not have to take on the work or risk of filing their own lawsuits but suffered an alleged loss of wages and reimbursements. In short, the percentage of fees sought by Class Counsel is in conformity with awards in similar cases in California and is reasonable for the benefit obtained for Class Members in this case.

B. A Lodestar Cross-check Shows the Requested Fee is Fair and Reasonable.

Despite the widely recognized limitations of the so-called lodestar method[2], California and federal courts acknowledge the utility of a lodestar “cross-check” for common fund awards. *Lealao*,

[2] It has been recognized that, in practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation. The lodestar also creates inherent incentive to prolong the litigation until enough hours are accrued. Herr, David F., *Manual for Complex Litigation*, § 14.121 (1988).

82 Cal. App. 4th at 46-47. In *Laffitte*, the Court permitted use of a "lodestar cross check," by which the trial court would first select a percentage of the common fund for the fee award, and then verify that the percentage chosen is fair and reasonable in light of the hours attorneys spent working on the case. *Laffitte*, 1 Cal. 5th at 504. While some "multiplier" would be expected, the multiplier should be "evaluated for reasonableness;" "rough parity" between the lodestar and the percentage-based recovery would make sense. *Id*. at 496. The Court explained that use of the lodestar cross-check represents "a blending of the two fee calculation methods" (percentage and lodestar), where "one method is used to confirm or question the reasonableness of the other's result." *Id*. at 497. The Court in *Laffitte*, however, did not require a lodestar cross check, and explained that courts "retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee." *Id*. at 505.

California's lodestar/multiplier method is a two-step fee calculation method under which the Court first determines a lodestar value for the fees by multiplying the time reasonably spent by the plaintiffs' counsel on the case by a reasonable hourly rate. *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-557 (2014). The starting point in determining the appropriate hourly fee is to discern the prevailing rate for similar work in the pertinent geographic region. *PLCM Group v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000) (using prevailing hourly rate in community for comparable legal services even though party used in-house counsel); *see also* Herr, Manual for Complex Litigation, § 14.122 (1984) ("reasonable fees . . . are to be calculated according to the prevailing market rates in the relevant community."). The Court has discretion to apply the rate currently charged by the attorneys at the time the approval is sought to compensate for a contingent risk of nonpayment or a lengthy delay in receiving payment. *See Missouri v. Jenkins,* 491 U.S. 274, 284 (1989) (district court may adjust an attorney fee 'for delay in payment . . . by the application of current rather than historic hourly rates or otherwise").

Here, Class Counsel's hourly rates are comparable to those charged by other class action plaintiff's counsel and the firms defending class actions. (Garay Decl. ¶ 24 Ex. A). Further, the total attorney hours expended on this action are reasonable and in line with comparable cases. Class Counsel billed a total of 89.98 hours prosecuting this case. Garay Decl., Ex. A. Class Counsel dedicated significant resources to this case by dividing necessary tasks according to skill level, and the professional hours generated by the attorney are neither unreasonable nor duplicative. (*Id.*) Multiplying the total hours billed by Class Counsel to the litigation of this case by their reasonable hourly rates yields a lodestar of $87,734.40. (Garay Decl. ¶ 24, Ex. A.) This amount reflects the efficiencies achieved by Class Counsel with significant experience in this field, and results in a negative lodestar of approximately.

C. The Requested Cost Award is Reasonable.

The Settlement allows Class Counsel to seek reimbursement of litigation costs in the amount of up to $20,000.00. Since Class Counsel's actual litigation costs reached $17, 494.05, they only seek reimbursement of this amount. (Garay Decl., ¶ 26, Ex. B.) see also Alba Conte, Attorney Fee Awards § 2:08 at 50-51 ("The prevailing view is that expenses are awarded in addition to the fee percentage."). All of the costs were reasonable and necessary for the prosecution and investigation of this case. *See id.*

V. THE CLASS REPRESENTATIVE ENHANCEMENT IS REASONABLE.

Plaintiff seeks an enhancement award for accepting the responsibilities of representing the interests of all Class Members and assuming the risks and potential costs that were not borne by any other Class Members. A named plaintiff is eligible for payment that reasonably compensates him for undertaking and fulfilling a fiduciary duty to represent absent class members. *Cellphone Termination Fee Cases,* 186 Cal. App. 4th 1380, 1393 (Cal. App. 1st Dist. 2010); *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004). "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785 (2009). By actively pursuing this action, Plaintiff has furthered the California public policy goal of enforcing California's wage and hour laws. *See Sav-On Drug*

Stores, Inc. v. Superior Court, 34 Cal. 4th 319, 340 (2004). Here, the requested award is appropriate and reasonable in light of the initiation and continuation of the action, the work performed, and risks for payment of Defendant's costs in the event of an unsuccessful outcome.

As Class Representative, Oswaldo Ocampo Montes assisted Class Counsel in gathering the evidence necessary to prosecute the claims on behalf of the Class, responding to requests for information, gathering and reviewing documents, helping Class Counsel evaluate the claims for mediation, and regularly seeking reports on the status of the case. Declaration of Oswaldo Ocampo Montes in Support of Motion for Final Approval of Class and PAGA Representative Action Settlement ("Montes Decl.") ¶¶ 4 – 9) Mr. Montes was able to provide detailed insight and information regarding Defendant's business operations and employment practices due to his years of employment with Defendant. (*Id.*)

It is unlikely that Class Members would have taken any action individually, and that any compensation would have been recovered for them, but for Plaintiff's services on behalf of the Class. Further, Plaintiff risked incurring the stigma commonly associated with those who bring such lawsuits. (Montes Decl. ¶ 9.) Given the increased risks Plaintiff faces from stepping forward for his fellow employees, he should be adequately compensated for his role in obtaining this Settlement. Additionally, Class Members did not object to the amount of additional compensation sought by Plaintiff,. As such, the award is reasonable in light of the substantial benefits Plaintiff conferred upon the Class Members.

VI. THE SETTLEMENT ADMINISTRATOR'S COSTS ARE REASONABLE.

The Parties mutually selected Phoenix Class Action Administration Solutions as Settlement Administrator, and the Court approved this choice at preliminary approval. *See* Preliminary Approval Order. Phoenix was responsible for updating Class Members' mailing addresses, preparing, printing and mailing the Notice Packets in English and Spanish, tracking any exclusions and objections by Class Members, providing weekly status reports, responding to any inquiries from counsel and Class Members, and submitting a declaration regarding its duties and work performed administering the Settlement. *See generally* Burns Decl. After the Court grants final approval, Phoenix will be responsible for calculating and mailing Individual Settlement Payments and PAGA settlement payments, distributing other payments as ordered by the Court, and performing other tasks as agreed to by the Parties or ordered by the Court. (*See* Burns Decl., ¶ 16.)

VII. CONCLUSION.

Based on the foregoing, Plaintiff requests that this Court grant final approval of the Class Action and PAGA Settlement.

Dated: June 23, 2025

JOSE GARAY, APLC

By: ______________________

Jose R. Garay
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