

1 BRANDON BROUILLETTE, ESQ. (SBN 273156)  
bbrouillette@crosnerlegal.com  
2 CHAD SAUNDERS, ESQ. (SBN 257810)  
chad@crosnerlegal.com  
3 ZACHARY M. CROSNER, ESQ. (SBN 272295)  
zach@crosnerlegal.com  
4 **CROSNER LEGAL, PC**  
9440 Santa Monica Blvd. Suite 301  
5 Beverly Hills, CA 90210  
Tel: (866) 276-7637  
6 Fax: (310) 510-6429

7 Attorneys for Plaintiff Pedro Cedeno

8 Norman B. Blumenthal (SBN 068687)  
Kyle R. Nordrehaug (SBN 205975)  
9 Aparajit Bhowmik (SBN 248066)  
Christine T. LeVu (SBN 288271)  
10 **BLUMENTHAL NORDREHAUG**  
**BHOWMIK DE BLOUW LLP**  
11 2255 Calle Clara  
La Jolla, CA 92037  
12 Telephone: (858) 551-1223  
Facsimile: (858) 551-1232

13 Attorneys for Plaintiff  
14 SANTOS MARTINEZ PADILLA

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF RIVERSIDE**

17  
18 PEDRO CEDENO, as an individual on behalf  
of himself and on behalf of all others similarly  
19 situated,

20 Plaintiff,

21 vs.

22 SANNIPOLI CORPORATION, a  
California Corporation; MATTHEWS  
23 INTERNATIONAL CORPORATION, a  
Pennsylvania Corporation; THE YORK  
24 GROUP, INC., a Delaware Corporation; and  
DOES 1-100, inclusive,

25 Defendants.  
26  
27  
28

) Lead Case No. CVRI2303826  
)  
) [Consolidated with Case Nos. CVRI2304132;  
) CVRI2304915; and CVRI2306853]  
)  
) Assigned for All Purposes To:  
) Judge: Harold W. Hopp  
) Dept: 1  
)  
) **MEMORANDUM OF POINTS &**  
) **AUTHORITIES IN SUPPORT OF**  
) **MOTION FOR FINAL APPROVAL OF**  
**CLASS ACTION SETTLEMENT AND**  
**REQUEST FOR ATTORNEY'S FEES AND**  
**COSTS**

**Date: January 15, 2025**  
**Time: 8:30 a.m.**  
**Dept. 1**

**TABLE OF CONTENTS**

|      |                                                                                                                                          |    |
|------|------------------------------------------------------------------------------------------------------------------------------------------|----|
| I.   | INTRODUCTION .....                                                                                                                       | 1  |
| II.  | FACTUAL BACKGROUND AND PROCEDURAL POSTURE.....                                                                                           | 2  |
| III. | THE PROPOSED SETTLEMENT TERMS .....                                                                                                      | 4  |
|      | A. Certification of the Settlement Class .....                                                                                           | 4  |
|      | B. The Benefit Conferred on the Settlement Class.....                                                                                    | 5  |
|      | C. Settlement Administration .....                                                                                                       | 5  |
|      | D. Release of Claims... ..                                                                                                               | 6  |
|      | E. PAGA Claims and Notice to the LWDA .....                                                                                              | 6  |
| IV.  | ARGUMENT.....                                                                                                                            | 7  |
|      | A. The Proposed Settlement Merits Final Approval .....                                                                                   | 8  |
|      | 1. The Settlement Is the Product of Arm's-Length, Informed<br>Negotiations.....                                                          | 8  |
|      | 2. The Class Reacted Favorably to the Settlement .....                                                                                   | 8  |
|      | 3. The Settlement Is Fair and Reasonable Considering the<br>Benefits Conferred, the Case Value, and Significant<br>Litigation Risks..... | 9  |
| V.   | PLAINTIFFS' ENHANCEMENT AWARDS .....                                                                                                     | 14 |
| VI.  | SETTLEMENT ADMINISTRATION COSTS .....                                                                                                    | 14 |

|    |       |                                                                              |    |
|----|-------|------------------------------------------------------------------------------|----|
| 1  | VII.  | ATTORNEY’S FEES AND COSTS.....                                               | 15 |
| 2  |       |                                                                              |    |
| 3  |       | A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be       |    |
| 4  |       | Approved.....                                                                | 15 |
| 5  |       | B. The Requested Fee Award Is Reasonable and Appropriate .....               | 16 |
| 6  |       |                                                                              |    |
| 7  |       | C. Class Counsel's Fees are Justified When Calculated as a Percentage of the |    |
| 8  |       | Common Fund.....                                                             | 16 |
| 9  |       | D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request .....    | 18 |
| 10 |       |                                                                              |    |
| 11 |       | E. The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the    |    |
| 12 |       | Skill Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar |    |
| 13 |       | Cases.....                                                                   | 20 |
| 14 |       | 1. The Results Achieved. ....                                                | 20 |
| 15 |       |                                                                              |    |
| 16 |       | 2. Class Counsel Bore Considerable Risk. ....                                | 21 |
| 17 |       |                                                                              |    |
| 18 |       | 3. The Skill Required and the Quality of Work. ....                          | 21 |
| 19 |       |                                                                              |    |
| 20 |       | 4. The Contingent Nature of the Fee and Risk Assumed .....                   | 21 |
| 21 |       |                                                                              |    |
| 22 |       | 5. Awards in Other Cases .....                                               | 22 |
| 23 |       |                                                                              |    |
| 24 |       | F. Class Counsel’s Costs and Expenses are Reasonable .....                   | 23 |
| 25 |       |                                                                              |    |
| 26 | VIII. | CONCLUSION.....                                                              | 23 |
| 27 |       |                                                                              |    |
| 28 |       |                                                                              |    |

## TABLE OF AUTHORITIES

Page(s)

### Cases

|                                                                                                                         |    |
|-------------------------------------------------------------------------------------------------------------------------|----|
| <u>7-Eleven Owners for Fair Franchising v. Southland Corp.</u><br>(2000) 85 Cal.App.4th 1135 .....                      | 13 |
| <u>Alvarado v. Dart Container Corp. of California</u><br>(2018) 4 Cal.5th 542 .....                                     | 10 |
| <u>Amaral v. Cintas Corp. No. 2</u><br>(2008) 163 Cal.App.4th 1157 .....                                                | 12 |
| <u>In re: American Bank Note Holographics,</u><br>127 F.Supp.2d 418 (S.D.N.Y. 2001) .....                               | 8  |
| <u>Blum v. Stenson</u><br>(1984) 465 U.S. 886.....                                                                      | 16 |
| <u>Boeing Co. v. Van Gernert</u><br>(1980) 444 U.S. 472.....                                                            | 17 |
| <u>Carrington v. Starbucks Corp.</u><br>(2018) 30 Cal.App.5th 504 .....                                                 | 12 |
| <u>Cazares v. Saenz</u><br>(1989) 208 Cal.App.3d 279 .....                                                              | 22 |
| <u>Chavez v. Netflix, Inc.</u><br>(2008) 162 Cal.App.4th 43 .....                                                       | 19 |
| <u>Class Plaintiffs v. City of Seattle</u><br>(9th Cir. 1992) 955 F.2d 1268, <u>cert. denied</u> , 506 U.S. 953 .....   | 7  |
| <u>Cochran v. Schwan’s Home Serv.</u><br>(2014) 228 Cal.App.4th 1137 .....                                              | 11 |
| <u>Deposit Guaranty Nat’l Bank, Jackson, Miss. v. Roper</u><br>(1980) 445 U.S. 326, <u>rehg. den.</u> 446 U.S. 947..... | 15 |
| <u>Dunk v. Ford Motor Co.</u><br>(1996) 48 Cal.App.4th 1794 .....                                                       | 7  |
| <u>Evans v. Jeff D.</u><br>(1986) 475 U.S. 717.....                                                                     | 16 |
| <u>Gattuso v Harte-Hanks Shoppers, Inc.</u><br>(2007) 42 Cal.4th 554 .....                                              | 11 |

|    |                                                             |            |
|----|-------------------------------------------------------------|------------|
| 1  | <u>Harris v. Marhoefer</u>                                  |            |
| 2  | (9th Cir. 1994) 24 F.3d 16 .....                            | 23         |
| 3  | <u>Hensley v. Eckerhart</u>                                 |            |
| 4  | (1983) 461 U.S. 424.....                                    | 16         |
| 5  | <u>Hernandez v. Restoration Hardware, Inc.</u>              |            |
| 6  | (2018) 4 Cal.5th 260 .....                                  | 17         |
| 7  | <u>Jennings v. Open Door Mktg. Inc.</u>                     |            |
| 8  | (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356 ..... | 12         |
| 9  | <u>Ketchum v. Moses</u>                                     |            |
| 10 | (2001) 24 Cal.4th 1122 .....                                | 22         |
| 11 | <u>Laffitte v. Robert Half Int’l., Inc.</u>                 |            |
| 12 | (2016) 1 Cal.5th 480 .....                                  | 17, 18, 20 |
| 13 | <u>Lane v. Facebook, Inc.</u>                               |            |
| 14 | (9th Cir. 2012) 696 F.3d 811 .....                          | 13         |
| 15 | <u>Lealao v. Beneficial Cal., Inc.</u>                      |            |
| 16 | (2000) 82 Cal.App.4th 19 .....                              | 15, 16     |
| 17 | <u>Levy v. Toyota Motor Sales, U.S.A.</u>                   |            |
| 18 | (1992) 4 Cal.App.4th 807 .....                              | 15         |
| 19 | <u>Mandujano v. Basic Vegetable Prods., Inc.,</u>           |            |
| 20 | 541 F.2d 832 (9th Cir. 1976) .....                          | 8          |
| 21 | <u>McKittrick v. Gardner</u>                                |            |
| 22 | (4th Cir. 1967) 378 F.2d 872 .....                          | 22         |
| 23 | <u>In re Omnivision Techs., Inc.,</u>                       |            |
| 24 | 559 (N.D. Cal. 2008) .....                                  | 21         |
| 25 | <u>Paul, Johnson, Alston &amp; Hunt v. Gaulty</u>           |            |
| 26 | (9th Cir. 1989 886 F.2d 268, 272) .....                     | 20         |
| 27 | <u>Potter v. Pacific Coast Lumber Co.</u>                   |            |
| 28 | (1951) 37 Cal.2d 592 .....                                  | 7          |
|    | <u>Powers v. Eichen</u>                                     |            |
|    | (9th Cir. 2000) 229 F.3d 1249 .....                         | 21, 22     |
|    | <u>Rider v. County of San Diego</u>                         |            |
|    | (1992) 11 Cal.App.4th 1410 .....                            | 23         |
|    | <u>See’s Candy Shops, Inc. v. Superior Court</u>            |            |
|    | (2012) 210 Cal. App. 4th 889 .....                          | 10         |

|    |                                                              |               |
|----|--------------------------------------------------------------|---------------|
| 1  | <u>Serrano v. Priest</u>                                     |               |
| 2  | (1977) 20 Cal.3d 25 .....                                    | 17, 23        |
| 3  | <u>Slavkov v. First Water Heater Partners I</u>              |               |
| 4  | (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303.....  | 12            |
| 5  | <u>Staton v. Boeing</u>                                      |               |
| 6  | (9th Cir. 2003) 327 F.3d 938 .....                           | 14            |
| 7  | <u>In re Taco Bell Wage and Hour Actions</u>                 |               |
| 8  | (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 .....   | 12            |
| 9  | <u>Van Bronkhorst v. Safeco Corp.</u>                        |               |
| 10 | (9th Cir. 1976) 529 F.2d 943,950 .....                       | 7             |
| 11 | <u>Van Kempen v. Matheson Tri-Gas, Inc.</u>                  |               |
| 12 | (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 ..... | 12            |
| 13 | <u>Vincent v. Hughes Air West, Inc.</u>                      |               |
| 14 | (9th Cir. 1977) 557 F.2d 759 .....                           | 17            |
| 15 | <u>In re Warner Communications Sec. Litig.</u>               |               |
| 16 | (S.D.N.Y. 1985) 618 F.Supp. 735 .....                        | 18, 22        |
| 17 | <u>Wershba v. Apple Computer</u>                             |               |
| 18 | (2001) 91 Cal.App.4th 224 .....                              | 7, 13, 17, 19 |
| 19 | <u>White v. Experian Information Solutions, Inc.</u>         |               |
| 20 | (C.D. Cal. 2011) 803 F.Supp.2d 1086 .....                    | 13            |

|    |                                                                                                                                                                                                                                          |        |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 1  | <b>Statutes</b>                                                                                                                                                                                                                          |        |
| 2  | California Labor Code §§ 510 and 1198 .....                                                                                                                                                                                              | 3      |
| 3  | California Labor Code §§ 1194, 1197, and 1197.1 .....                                                                                                                                                                                    | 3      |
| 4  | California Rule of Court 3.769 .....                                                                                                                                                                                                     | 7, 15  |
| 5  | Labor Code §§ 201 and 202.....                                                                                                                                                                                                           | 3      |
| 6  | Labor Code § 203 .....                                                                                                                                                                                                                   | 12     |
| 7  | Labor Code § 226 .....                                                                                                                                                                                                                   | 11     |
| 8  | Labor Code § 226(a).....                                                                                                                                                                                                                 | 3      |
| 9  | Labor Code § 226.7 .....                                                                                                                                                                                                                 | 3      |
| 10 | Labor Code §§ 226.7 and 512 (a) .....                                                                                                                                                                                                    | 3      |
| 11 | Labor Code § 2699(e)(2) .....                                                                                                                                                                                                            | 12     |
| 12 | Labor Code section 2699(l)(2).....                                                                                                                                                                                                       | 6      |
| 13 | Labor Code §§ 2800 and 2802.....                                                                                                                                                                                                         | 3      |
| 14 | <b>Other Authorities</b>                                                                                                                                                                                                                 |        |
| 15 | <u>Attorney Fee Awards</u> (2d ed. 1993) § 104 .....                                                                                                                                                                                     | 17     |
| 16 | <u>Business &amp; Professions Code</u> §§ 17200, et seq. ....                                                                                                                                                                            | 3      |
| 17 | <u>Managing Class Action Litigation: A Pocket Guide for Judges</u> (3d ed. 2010),<br>available at <a href="http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf">http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf</a> ..... | 13     |
| 18 | <u>Newberg on Class Actions</u> (3d ed.) § 14.03 .....                                                                                                                                                                                   | 18, 22 |
| 19 | <u>Newberg on Class Actions</u> (4th ed. 2002), § 11.41 .....                                                                                                                                                                            | 7      |
| 20 |                                                                                                                                                                                                                                          |        |
| 21 |                                                                                                                                                                                                                                          |        |
| 22 |                                                                                                                                                                                                                                          |        |
| 23 |                                                                                                                                                                                                                                          |        |
| 24 |                                                                                                                                                                                                                                          |        |
| 25 |                                                                                                                                                                                                                                          |        |
| 26 |                                                                                                                                                                                                                                          |        |
| 27 |                                                                                                                                                                                                                                          |        |
| 28 |                                                                                                                                                                                                                                          |        |

1 **I. INTRODUCTION**

2 Plaintiffs and Class Representatives Pedro Ceden0 and Santos Martinez Padilla seek final  
3 approval of a non-reversionary class action settlement resolving wage and hour claims on behalf of  
4 525 individuals who worked for Defendants Matthews International Corporation, The York Group  
5 Inc., and Sannipoli Corporation (collectively “Defendants”) as non-exempt employees, directly or  
6 through a staffing agency, at a Sannipoli Corporation d/b/a/ Whited Cemetery Service location in  
7 California during the Class Period of July 26, 2019, through April 4, 2024. The proposed \$900,000  
8 total settlement provides about \$484,850 in cash payments to the Class, with an average award of  
9 about \$923, plus additional amounts payable under PAGA. The remaining balance will cover  
10 modest service awards to Plaintiffs, settlement administration costs, civil penalties to the state, and  
11 reasonable attorney’s fees and costs. The parties and their counsel finalized the settlement after  
12 extensive and difficult arms-length negotiations overseen by an experienced and highly-regarded  
13 mediator. The Court conditionally certified the Class and preliminarily approved the settlement on  
14 September 5, 2024. Since then, the Court-approved notice form was mailed to the Class Members  
15 on November 1, 2024, and they have reacted very favorably to the settlement. As of the filing of  
16 this motion, no Class Members have requested exclusion, and there are no objections.

17 Class Counsel secured an excellent settlement with Defendants after extensive  
18 investigation, litigation, and settlement negotiation and administration, all without any  
19 compensation for services rendered or costs expended. The class notice duly informed the  
20 class members that Class Counsel would request attorney’s fees not to exceed one-third of  
21 the Gross Settlement Amount, or \$300,000.00, along with reimbursement of no more than  
22 \$25,000 for actual costs incurred litigating this matter. As of the filing of this motion, *not*  
23 *one Class Member objected* to the proposed fee award. Consistent with the Settlement  
24 and notice, Plaintiffs now respectfully request the Court award Class Counsel's fees in the  
25 amount of \$300,000 and costs in the amount of \$22,259.19, as described in the  
26 Declaration of Chad Saunders (“Saunders Decl.”) and the Declaration of Kyle Nordrehaug  
27 (“Nordrehaug Decl.”), filed herewith. The requested attorney’s fees are well within the  
28 range of reasonableness, especially considering the complex and risky nature of this

1 litigation, the contingent risk assumed, the nearly two-plus delay in payment and, when  
2 subjected to a lodestar crosscheck, result in a base reasonable lodestar enhancement of  
3 about \_\_\_\_.

4 Accordingly, on behalf of themselves and the Settlement Class, Plaintiffs respectfully  
5 request the Court grant this motion, give full and final approval to the settlement, grant Class  
6 Counsels' request for attorney's fees and costs, and enter judgment accordingly.

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

8 Sannipoli Corp., which at the relevant times did business as Whited Cemetery Service,  
9 manufactures in-ground concrete burial vaults and other burial products in California. In or around  
10 January 2021, Sannipoli was acquired by Defendant The York Group, Inc. (which in turn is owned  
11 by Defendant Matthews International Corp.). Plaintiff Cedeno was employed by Sannipoli/Whited  
12 as a non-exempt employee with a job title of laborer and quality control inspector from in or around  
13 April 2022, through April 25, 2023. He worked for Whited at its Menifee, California location.  
14 Plaintiff Padilla likewise was a non-exempt employee of Defendants during the relevant time period.  
15 [Saunders Decl., ¶ 2.]

16 Plaintiffs allege Defendants committed a number of Labor Code violations. First, they claim  
17 Sannipoli utilized a time rounding policy that resulted in systematic underpayment of wages, and  
18 further that Sannipoli did not pay Plaintiffs and Class Members overtime at the regular rate of pay  
19 and failed to incorporate, inter alia, non-discretionary bonuses into the regular rate for pay. Next  
20 Plaintiffs alleged Sannipoli did not provide second meal periods when employees worked more than  
21 10 hours in a workday, and also did not permit employees to take off-duty rest breaks because  
22 Defendants' policy states that employees "must remain on the facility premises" during rest breaks.  
23 Plaintiffs also alleged they incurred unreimbursed expenses such as use of personal telephones and  
24 personal vehicles on company business. Finally, Plaintiffs alleged Sannipoli did not list the name of  
25 the legal entity that was the employer on wage statements but instead identified the dba "Whited  
26 Cemetery Service" as the employer even though no such legal entity exists. [Saunders Decl., ¶ 3.]

27 Based on these allegations, Plaintiffs collectively filed several complaints against  
28 Defendants. First, on July 26, 2023, Plaintiff Cedeno filed a putative class action, case number

1 CVRI2303826, alleging (1) violation of California Labor Code §§ 1194, 1197, and 1197.1 (unpaid  
2 minimum wages); (2) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (3)  
3 violation of Labor Code §§ 226.7 and 512 (a) (unpaid meal period premiums); (4) violation of Labor  
4 Code § 226.7 (unpaid rest period premiums); (5) violation of Labor Code § 226(a) (non-compliant  
5 wage statements); (6) violation of Labor Code §§ 201 and 202 (final wages not timely paid); (7)  
6 violation of Labor Code §§ 2800 and 2802 (unreimbursed business expenses); (8) violation of  
7 Business & Professions Code §§ 17200, et seq. On August 11, 2023, after notice to Labor &  
8 Workforce Development Agency (“LWDA”), Plaintiff Cedenó filed a separate complaint seeking  
9 civil penalties under PAGA based on the same alleged Labor Code violations. [Saunders Decl., ¶ 4.]

10 On September 18, 2023, Plaintiff Padilla filed a putative class action complaint in Riverside  
11 County Superior Court against Defendants, case number CVRI2304915, alleging largely the same  
12 Labor Code violations as the Cedenó action. On December 21, 2023, after exhausting administrative  
13 remedies, Padilla filed a second complaint under the PAGA against Defendants, case number  
14 CVRI2306853. [Saunders Decl., ¶ 5.]

15 On February 8, 2024, the Parties filed a stipulation to consolidate all of the above complaints  
16 into a single action, with the lead Case Number CVRI2303826. On February 20, 2024 the Court  
17 granted the stipulation and ordered the Complaints to be consolidated for the purposes of settlement  
18 and approval. [Saunders Decl., ¶ 6.]

19 On the merits, Defendants have at all times denied Plaintiffs’ collective allegations and  
20 maintained their timekeeping and payroll policies accurately track and pay for all hours worked by  
21 its employees and at the correct rates of pay. Defendants further contend they provided employees  
22 with all required meal and rest breaks on a fully compliant basis, and reimbursed any reasonable and  
23 necessary business expenses as required under California law. Defendants also argued the case  
24 cannot be maintained as any kind of class or representative action, emphasizing for example that to  
25 the extent class members missed meal and/or rest breaks, or that such breaks were non-compliant, it  
26 was intermittent and infrequent and evidence of such missed breaks would be purely anecdotal, and  
27 therefore individualized issues predominate and trial on a representative basis would be  
28 unmanageable. [Saunders Decl., ¶ 7.]

1 After Plaintiffs filed their respective complaints, the Parties met and conferred on discovery,  
2 potential law and motion, and other case management issues, and ultimately agreed to attempt a  
3 global mediation. The Parties then engaged in extensive informal discovery to facilitate an exchange  
4 of information necessary to engage in a meaningful mediation. The Parties then engaged Louis  
5 Marlin, Esq., a highly respected mediator with extensive wage and hour class action experience and,  
6 January 2024, participated in a full day mediation with Mr. Marlin. By the end of the day, the Parties  
7 were able to reach agreement on all major issues. [Saunders Decl., ¶¶ 8-9.] The Court granted  
8 preliminary approval to the settlement on August 27, 2024.

9 Class Notices were mailed to class members on November 1, 2024, with a 45-day  
10 window (to December 16, 2024) for class members to opt out or object to the proposed  
11 settlement. [Declaration of Madely Nava (“Nava Decl.”), ¶¶ 12-13.]

### 12 **III. THE PROPOSED SETTLEMENT TERMS**

13 Under the settlement, Defendants will pay \$900,000 into a common fund, the Gross  
14 Settlement Amount. Reasonable attorney’s fees of up to \$300,000 (33 1/3% of the GSA), actual  
15 litigation costs not to exceed \$25,000 (only \$22,259.19 is requested), enhancement awards to  
16 Plaintiffs of up to \$10,000 each, settlement administration costs of \$12,890.00, and \$60,000 for civil  
17 penalties under PAGA (of which 75%, or \$45,000, will go to the Labor & Workforce Development  
18 Agency, and 25%, or \$15,000 will go to the PAGA Employees) all will be paid from the Gross  
19 Settlement Amount. The remainder of approximately \$484,850 will be allocated among the  
20 Settlement Class Members based on their total weeks worked during the Class Period. No portion of  
21 the Gross Settlement Amount will revert to Defendants. [Saunders Decl., ¶ 10.]

#### 22 **A. Certification of the Settlement Class**

23 The Court conditionally certified a settlement class defined to include all current and former  
24 non-exempt hourly employees, including Plaintiffs, who worked for Defendants directly or through  
25 a staffing agency at a Sannipoli Corporation d/b/a/ Whited Cemetery Service location in California  
26 during the Class Period of July 26, 2019 to April 4, 2024. The Settlement Administrator  
27 ultimately mailed class notices to 525 individuals identified as members of the Class. [Nava  
28 Decl., ¶ 7.] Nothing has changed to require reconsideration of the Court’s certification of

1 the Settlement Class.

2 **B. The Benefit Conferred on the Settlement Class**

3 This is a cash settlement that does not require Settlement Class Members to submit a claim  
4 form to receive their settlement share. Settlement Class Members will receive their settlement checks  
5 automatically via First Class U.S. Mail. Seventy-five percent of each settlement share will be  
6 allocated to wages and the remaining twenty-five percent will be allocated to expenses  
7 reimbursement, penalties and interest. Defendants will pay any and all applicable employer-side  
8 payroll taxes separately and in addition to the Gross Settlement Amount. Subject to the Court's  
9 approval, any amounts not claimed (because a class member does not cash his or her settlement  
10 check) will be forwarded to the State Controller's Unclaimed Property Fund. [Saunders Decl., ¶ 11.]

11 Each Settlement Class Member will receive a share of the Net Settlement Amount based on  
12 his or her total weeks worked for Defendants during the Class Period while employed in a non-  
13 exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated using  
14 criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages  
15 for missed meal and rest breaks, and potential statutory penalties under applicable law. These  
16 methods are intended to ensure each Class Member receives a portion of the available settlement  
17 funds corresponding to the relative value of his or her potential claims. The proposed allocation  
18 provides a reasonable way to compensate Class Members based on the amount of time they worked  
19 for Defendants and the number of instances they missed a meal break and/or rest break, were not  
20 provided compensation in lieu of such missed breaks, or lost pay due to the alleged rounding and  
21 regular rate issues. [Saunders Decl., ¶ 12.]

22 The average class settlement award will be approximately \$923.53, and the class awards will  
23 range from about \$22.81 to about \$5,588.73 on the high end. The estimated average PAGA award  
24 will be about \$66.37, and PAGA awards will range from about \$1.75 to \$166.69. [Nava Decl., ¶¶ 15-  
25 18.]

26 **C. Settlement Administration**

27 Apex Class Action, as the Court-approved Settlement Administrator, mailed the Notice  
28 Packet to the Class members after making all reasonable effort to ascertain the best mailing

1 address, including running each address through the National Change of Address database and  
2 "skip-tracing" any Notice Packets returned as undeliverable. [Nava Decl., ¶¶ 3-10.] The Class  
3 Notice, previously approved by the Court, duly informed Class Members of the settlement terms,  
4 including the estimated relief each Class Member will receive, the amounts to be requested for  
5 attorney's fees and the class representative enhancement awards, and the right to opt out of or  
6 object to the settlement. [Nava Decl., ¶ 7, Exh. A.] Apex mailed 525 Notice Packets on  
7 November 1, 2024. [Nava Decl., ¶ 7.] Ultimately, six Notice Packets were deemed  
8 undeliverable, representing a 98.9% success rate. [Nava Decl., ¶ 10.] The 45-day response  
9 window for objecting to the settlement or opting out expired on December 16, 2024. [Nava  
10 Decl., ¶¶ 12-13.] As of the filing of this motion, Apex has received zero requests for exclusion  
11 (for a 100% participation rate), and zero objections to the settlement. No disputes have been  
12 submitted regarding the information used to calculate class member settlement shares. [Nava  
13 Decl., ¶¶ 11-13.]

14 **D. Release of Claims**

15 All Settlement Class Members will release Defendants from all claims alleged in the  
16 operative complaint, or that could have been brought based on the factual allegations in the complaint  
17 during the Class Period. Plaintiffs and the LWDA will release those PAGA claims alleged in the  
18 PAGA notice to the extent alleged in the operative complaint. The Class and PAGA releases are  
19 limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts  
20 in the operative complaint, and PAGA notice for the PAGA claims. Only Plaintiffs will provide a  
21 full general release of all claims. [Saunders Decl., ¶ 13.]

22 **E. PAGA Claims and Notice to the LWDA**

23 As noted, the Parties allocated \$60,000 from the GSA to resolution of Plaintiffs' claims under  
24 PAGA, and Plaintiffs submit that amount is fair, reasonable, and adequate, and consistent with  
25 PAGA's underlying purposes. As required by Labor Code section 2699(l)(2), Plaintiffs gave notice  
26 of the settlement and approval hearing to the LWDA via its online portal. [Saunders Decl., ¶ 14;  
27 Exh. 1.]

28 ///

1 **IV. ARGUMENT**

2 The law favors settlement, particularly in class actions where substantial resources can  
3 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A. Conte,  
4 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle (9th Cir.  
5 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco Corp. (9th  
6 Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d 592, 602.  
7 Nevertheless, to make certain the rights of absent parties are not unjustly compromised, the  
8 settlement of a class action requires court approval. Cal. Rule of Court 3.769; Dunk v. Ford  
9 Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple Computer (2001) 91  
10 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud or collusion,  
11 and to ensure fairness to absent class members. Dunk, 48 Cal.App.4th at 1800-01; Newberg, at  
12 §§ 11.22, *et seq.* Review is accomplished through a two-step process intended to determine  
13 whether, under the totality of circumstances, the settlement is fair, reasonable and adequate.  
14 Dunk, 48 Cal.App.4th at 1801; Wershba, 91 Cal.App.4th at 245.

15 On a motion for final approval, the trial court is charged with determining whether, in  
16 light of the total circumstances of the action and the response of the class members to the  
17 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at  
18 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that  
19 determination and may consider a number of relevant factors, including: the strength of  
20 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of  
21 further litigation; the amount offered in settlement; the extent of discovery and stage of the  
22 proceedings; the experience and opinion of counsel; and the reaction of class members to the  
23 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,  
24 courts generally apply a presumption of fairness to a proposed class action settlement when: (1)  
25 the settlement is reached through arm's-length bargaining; (2) investigation and discovery are  
26 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
27 litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802; Wershba,  
28 91 Cal.App.4th at 245.

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

2           The proposed settlement of this action warrants final approval under the standards  
3 summarized above. The settlement is fair, reasonable and adequate, and represents a favorable  
4 resolution of highly disputed claims. Further, the settlement thus far has been overwhelmingly  
5 approved by the class members, as there are no objections and no Class Members requested  
6 exclusion.

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

9           The settlement is not the result of fraud or collusion. Rather, the proposed settlement was  
10 reached following arm's-length negotiations presided over by Louis Marlin, Esq., a highly  
11 respected and well-known mediator with extensive experience mediating wage and hour class  
12 actions. [Saunders Decl., ¶ 9.] Moreover, Plaintiffs and their counsel were well-informed about  
13 the facts and the law, and counsel Zachary M. Crosner, Jamie Serb, and Brandon Brouillette and  
14 Crosner Legal, and Norman Blumenthal, Kyle Nordrehaug, Aparajit Bhowmik, and Christine LeVu and  
15 Blumenthal Nordrehaug Bhowmick De Blouw all have years of litigation experience, including  
16 litigating wage and hour class actions. Plaintiffs' counsel are well-qualified to evaluate the risks and  
17 benefits of pursuing further litigation or settling the matter. [Saunders Decl., ¶¶ 30-44; Nordrehaug  
18 Decl., ¶¶ 9-14.] Defendants likewise were represented by highly-qualified and experienced  
19 defense counsel. Both sides advocated vigorously for their clients, and nothing was "left on the  
20 table."

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

22           The settlement was well-received by the class. As of the filing of this motion, no  
23 objections have been filed, and no Class Member has requested exclusion out of 525 settlement  
24 class members. [Nava Decl., ¶¶ 12-13.] As many courts recognize, class member reaction to the  
25 settlement is one of the most important factors to consider in determining if final approval should be  
26 granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In  
27 re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled  
28 that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in

1 considering its adequacy”) (internal quotation marks omitted).

2 **3. The Settlement Is Fair and Reasonable Considering the Benefits**  
3 **Conferred, the Case Value, and Significant Litigation Risks**

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

11 Prior to mediation, the parties engaged in both formal and informal discovery to facilitate  
12 settlement discussions. As a result, Plaintiffs reviewed documents and information regarding  
13 Defendants’ payroll practices, a representative sampling of pay stubs and time records for about 25%  
14 of the class members, applicable compensation plans, meal and rest break policies, etc., and  
15 information from Defendants regarding class size and breakdown, number of work weeks/pay  
16 periods, average rates of pay, and other information used to formulate a damages model. Plaintiffs  
17 then had that information reviewed with the assistance of a consulting expert. Plaintiffs’ counsel are  
18 confident they obtained sufficient information to understand the law and facts of this case and make  
19 an informed decision regarding the proposed settlement and whether it is fair and reasonable.  
20 [Saunders Decl., ¶¶ 8, 15.]

21 Using the data obtained from Defendants, Plaintiffs ran various calculations and estimated  
22 Defendants’ likely maximum exposure on the class claims at approximately **\$4.730** million,  
23 including about \$78,600 on the unpaid wage/rounding claim, \$17,000 on the underpaid  
24 overtime/regular rate claims, \$630,500 on the meal break claims, \$1,531,000 on the rest break claims,  
25 \$190,090 on the unreimbursed expense claims, \$670,000 on the wage statement claims, and  
26 \$1,613,000 on the waiting time penalty claims. [Saunders Decl., ¶ 16.]

27 First, on their unpaid wage claims, Plaintiffs allege Defendants’ compensation plans  
28 failed to pay for all hours worked and particularly that Defendants rounded employee time

1 punches such that the class members systematically lost hours worked as a result. Per Plaintiffs’  
2 experts’ analysis, around 79% of the class members lost time due to rounding, and the overall  
3 class lost nearly 3,000 hours of pay. In response, Defendants argued their timekeeping and  
4 payroll policies accurately tracked and paid for all employee time, and that any rounding was  
5 entirely neutral in its overall impact on employee pay and thus permissible under cases such as  
6 See’s Candy Shops, Inc. v. Superior Court (2012) 210 Cal. App. 4th 889. Thus, per Defendants,  
7 any time rounding resulted in no loss of compensable time or pay to the class members. On the  
8 regular rate claim, Plaintiffs alleged employees were not paid all overtime wages due because  
9 Defendants did not include certain forms of compensation, primarily non-discretionary bonus  
10 payments, in the “regular rate of pay” used to calculate the correct overtime rate. “Regular rate of  
11 pay, which can change from pay period to pay period, includes adjustments to the straight time  
12 rate, reflecting, among other things, shift differentials and the per-hour value of any non-hourly  
13 compensation the employee has earned.” Alvarado v. Dart Container Corp. of California (2018) 4  
14 Cal.5th 542, 554. As a result, Plaintiffs contend Defendants frequently underpaid the Class  
15 Members for their overtime. While Plaintiffs believe this is one of their stronger claims, they  
16 also recognize the exposure is nominal, as the amount lost typically is only a few dollars per  
17 work week. [Saunders Decl., ¶ 17.]

18 On the meal break claims, Plaintiffs primarily contend there are numerous “de facto”  
19 violations for missed, late, and short meal periods. Per Plaintiffs, their experts’ review of the time  
20 records produced suggested a violation rate of around 43% for missed and non-compliant meal  
21 periods, including missed second lunches on 10+ hour shifts. In response, Defendants argued their  
22 break policies are fully compliant with California law, that it provided class members with the  
23 opportunity to take all required breaks, and that many class members waived second meal periods.  
24 Defendants further maintained that, in light of its compliant policies, whether a class member  
25 missed a meal period, received a late meal period, or missed a rest break would have been  
26 aberrational and against company policy. Thus, per Defendants, these issues are not amenable to  
27 class or representative treatment since their resolution would require individualized inquiries as to  
28 why a break was missed or non-compliant. Further, Defendants emphasized it paid thousands in

1 premium wages for documented violations. [Saunders Decl., ¶ 18.]

2 For rest breaks, Plaintiffs again argued that there were numerous “de facto” violations  
3 where class members didn’t receive a break (especially third breaks), or didn’t receive a compliant  
4 break/had their breaks interrupted by supervisors. Plaintiffs further argued Defendants’ policies  
5 prohibited them from leaving the premises while on a rest break. As with meal breaks, Defendants  
6 argued the applicable rest break policies complied with California law, and that it authorized and  
7 permitted employees to take all required breaks. Defendants further contended that, in light of the  
8 fact that it is not required to maintain a record of rest periods, any evidence of failure to authorize  
9 rest periods and/or discouragement from taking rest periods would be purely anecdotal and  
10 individual issues would predominate on liability. This arguably would once again make class  
11 certification and a trial unmanageable since the number of instances an employee missed a rest  
12 break, or had a break interrupted, would have to be tested on a case by case basis to determine  
13 compliance. [Saunders Decl., ¶ 19.]

14 On the expense reimbursement claim, Plaintiffs allege that use of his personal cellular phone  
15 was necessary and consequential to his employment duties for purposes of communicating with  
16 supervisors. Defendants did not reimburse employees for the cost associated with the use of the  
17 personal cellular phones for Defendants’ benefit. Cochran v. Schwan’s Home Serv. (2014) 228  
18 Cal.App.4th 1137, 1144. Plaintiffs further argued class members occasionally had to drive their  
19 personal vehicles for work purposes but did not receive any reimbursement. Gattuso v Harte-Hanks  
20 Shoppers, Inc. (2007) 42 Cal.4th 554. In response, Defendants argued it provided employees with  
21 all tools and equipment necessary to perform their job duties, and to the extent employees used their  
22 own phones while at work it was purely for personal convenience, was not necessary to their  
23 employment, and therefore was not reimbursable. Similarly, per Defendants there would be no need  
24 for class members to use their personal vehicles on company business. [Saunders Decl., ¶ 20.]

25 As far as the wage statement claim, Plaintiffs allege Defendants wage statements violated  
26 Section 226(a)(8) on their face because they do not identify the actual legal entity that employed the  
27 class members. He further alleges derivative claims under Labor Code § 226 (inaccurate wage  
28 statements) and §§ 201-203 (waiting time penalties). These derivative claims are based on the unpaid

1 wage claims and will rise or fall along with those primary claims, in addition to being subject to  
2 “good faith” and other defenses available to Defendants. E.g., Amaral v. Cintas Corp. No. 2 (2008)  
3 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor  
4 Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay  
5 living wages). Defendants argued further that the wage statements accurately contained all required  
6 information, and that acted in good faith all times with respect to payment of wages. Accordingly,  
7 Plaintiffs discounted these claims significantly in light of these multiple potential defenses.  
8 [Saunders Decl., ¶ 21.]

9 As far as potential PAGA liability, the alleged aggrieved employees theoretically are entitled  
10 to penalties totaling about **\$2.639** million should Plaintiffs prevail on all claims, establish violations  
11 of the multiple Labor Code sections at issue, and secure the maximum penalty on all claims as to all  
12 pay periods at issue. As with the class claims, Plaintiffs discounted the potential PAGA penalties  
13 based on Defendants’ various defenses on the merits and also accounted for the Court’s wide  
14 discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2);  
15 Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of \$5 per  
16 pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour  
17 Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial).  
18 Accordingly, the Parties allocated \$60,000 to PAGA penalties. [Saunders Decl., ¶¶ 22-23.]

19 Plaintiffs submit this amount is reasonable under the circumstances and in line with  
20 comparable settlements in other wage and hour class actions in California. E.g., Van Kempen v.  
21 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final  
22 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);  
23 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303  
24 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of  
25 \$345,000 and the possible weaknesses in plaintiffs’ case, or 2.2 percent of total settlement).  
26 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and  
27 will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018)  
28 2018 U.S. Dist. LEXIS 171356, at \*27 (approving settlement with PAGA penalties of 0.6% where

1 "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not  
2 objected to the settlement.

3 Taking into account all of the above-discussed risk factors, Plaintiffs calculated Defendants'  
4 exposure on the class claims at around **\$1,182,000** on a risk-discounted basis and, accordingly, the  
5 settlement represents a little under 77% of the estimated recovery after trial. Given Defendants'  
6 multi-layered defenses and all other potential risks of continued litigation, a total recovery for the  
7 class of \$900,000, which will result in average award of over \$1,045 per class member, is a  
8 significant result well within the range of reasonableness considering all potential outcomes, and it  
9 will provide direct monetary awards to all Class Members without further delay. [Saunders Decl.,  
10 ¶¶ 24-25; Nordrehaug Decl., ¶¶ 1-8.]

11 Importantly, the mere fact that a settlement does not provide the same recovery as might be  
12 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.  
13 Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement  
14 process...even if the relief afforded by the proposed settlement is substantially narrower than it  
15 would be if the suits were to be successfully litigated, this is no bar to a class settlement because the  
16 public interest may indeed be served by a voluntary settlement in which each side gives ground in  
17 the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000)  
18 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of  
19 the potential recovery does not, in and of itself, mean that the proposed settlement is grossly  
20 inadequate and should be disapproved"); White v. Experian Information Solutions, Inc. (C.D. Cal.  
21 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even  
22 though it represented 99% discount off the maximum value of the claims); Lane v. Facebook, Inc.  
23 (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is  
24 different from the question whether the settlement is perfect in the estimation of the reviewing  
25 court"). Importantly as well, the proposed settlement is non-reversionary and will provide immediate  
26 benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal  
27 Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20,  
28 available at [http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf) (reversionary provisions

1 and/or cumbersome claims process may indicate lack of fairness). Plaintiffs and their counsel submit  
2 the settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

3 **V. PLAINTIFFS’ ENHANCEMENT AWARDS**

4 Under the terms of the settlement, Plaintiffs each seek a modest incentive award of  
5 \$10,000 for their service in bringing these claims on behalf of the Class. The requests are  
6 reasonable given the risks they undertook on behalf of the Class Members. By contacting and  
7 retaining counsel to pursue these claims, Plaintiffs helped make this settlement possible for the  
8 absent Class Members, while shouldering the risk of being liable for Defendants’ litigation costs.  
9 Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit  
10 (discoverable even through a simple google search) for the benefit of other employees, placing  
11 themselves at risk of discrimination by future prospective employers. As set forth in more detail  
12 in their respective declarations submitted with the preliminary approval motion, among taking  
13 many other actions assisting in the successful litigation of this case, Plaintiffs provided  
14 substantial factual information and documents to counsel, attended numerous meetings/phone  
15 conferences with counsel to discuss the case, and kept abreast of all significant developments.  
16 [Declaration of Pedro Ceden, ¶¶ 2-9; Declaration of Santos Martinez Padilla, ¶¶ 3-16; Saunders  
17 Decl., ¶ 26.] Accordingly, the requested enhancement payments to Plaintiff is appropriate and  
18 justified as part of the settlement. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting  
19 cases awarding class representatives service and incentive payments ranging from \$2,000 to  
20 \$25,000).

21 **VI. SETTLEMENT ADMINISTRATION COSTS**

22 The settlement provides for a payment to Apex for its services as the Settlement  
23 Administrator. As set forth in the Declaration of Madely Nava, Apex has performed and will  
24 continue to perform its required duties through final distribution of the settlement funds and  
25 incurred \$12,890.00 in fees and expenses. [Nava Decl., ¶ 19.] Accordingly, Plaintiffs respectfully  
26 request the Court approve payment of \$12,890.00 to Apex from the GSA. [Saunders Decl., ¶ 27.]

27 ///

28 ///

1 **VII. ATTORNEY'S FEES AND COSTS**

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

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

15 As addressed in detail above, at the time the parties reached the tentative settlement  
16 success for Plaintiffs and the putative class was far from certain. Plaintiffs faced a real risk  
17 that some or all the claims would not be certified for class treatment, as Defendant had strong  
18 arguments that its compensation policies were legal and properly compensated the class  
19 members, that the class might not be sufficiently numerous, and that many putative class  
20 members previously waived the claims at issue. Even if Plaintiffs certified some or all of the  
21 claims and ultimately prevailed on the merits, it undoubtedly would have taken several years  
22 to realize any recovery while they pursued class certification, trial, and an almost certain  
23 appeal. [Saunders Decl., ¶¶ 17-23.]

24 Nonetheless, Plaintiffs succeeded and expeditiously obtained the relief they set out to  
25 obtain, and the settlement provides substantial cash payments to Class Members, with an  
26 average award of about \$923, and with a maximum award of over \$5,500. Importantly as well,  
27 the Class Members have been overwhelmingly supportive of the Settlement – as of the filing  
28 of this motion, there are no objections to the settlement and no opt outs. [Nava Decl., ¶¶ 12-

13.]

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

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

As part of the Settlement, Defendants agreed not to object to an award of no more than 1/3 of the GSA for attorney's fees, or \$300,000, and up to \$25,000 in reimbursement for litigation costs and expenses (only \$22,259.19 is requested). Such a fee is commensurate with what the market would provide for similar services and the Court therefore can most certainly enforce the agreement. As California's Court of Appeal has instructed:

Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, 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, as it will otherwise be economic for defendants to increase injurious behavior.

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

Here, the parties did not negotiate the inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to the Class was completed. [Saunders Decl., ¶ 28.] The requested fee and cost award was a product of these arms-length negotiations and fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As a result, the fee agreed to by the parties should be approved.

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

In approving fee applications, courts typically apply either a percentage-of-recovery

1 method or the lodestar method. Laffitte v. Robert Half Int'l., Inc. (2016) 1 Cal.5th 480, 489;  
2 Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other  
3 grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260. The California  
4 Supreme Court recently recognized the advantages and equities of calculating attorney's fees  
5 using the percentage-of-the-common-fund method in another wage-and-hour case:

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

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

13       Indeed, both California and federal courts have long recognized an appropriate method  
14 for determining the award of attorney's fees is based on a percentage of the total value of  
15 benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,  
16 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.  
17 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund  
18 recovered operates to "spread litigation costs proportionately among all the beneficiaries so  
19 that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

20       In determining a reasonable common fund fee award, courts should also consider the  
21 fact that fees serve as an economic incentive for lawyers to bring class action litigation to  
22 achieve increased access to the judicial system for meritorious claims and to enhance  
23 deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without  
24 prosecution on a contingent basis and use of the class action mechanism, the courthouse door  
25 would effectively be closed to most class members due to the relatively small size of their  
26 individual claims in relation to the enormous time and cost associated with class action  
27 litigation.

28       Here, Class Counsel seek a fee award for their successful prosecution and resolution of  
this action of no more than one-third of the total amount recovered by the Class via the  
lawsuit, or \$300,000. The percentage requested is justified for the reasons set forth further

below, and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements shows that courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

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

To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel collectively spent 324.4 hours of time on this matter, resulting in a modest and very reasonable lodestar of \$246,607.50.

As is fully detailed in the Saunders and Nordrehaug Declarations, Class Counsel's efforts included: (1) extensive pre-lawsuit investigation of the claims of Plaintiffs and the putative class, including legal research, obtaining Plaintiffs' employment records, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other Fraiche employees; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related documents; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (6) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (7) drafting a mediation brief and accompanying damages model after review and analysis of defendant's informal discovery production; (8) attending an all-day mediation; (9) negotiating and drafting the settlement agreement and related documents; (10) drafting the motion for preliminary approval and

1 attending the hearing thereon; (11) administration of the settlement, including addressing  
2 application of the escalator clause, communications with the Settlement Administrator and  
3 settlement class members; (12) drafting the motion for final approval and motion for attorney's  
4 fees, and attending the final approval hearing; and (13) extensive communications with the  
5 Plaintiffs regarding case status, case investigation and document review, mediation, and settlement  
6 terms. Additionally, Class Counsel will incur additional time to attend the final approval hearing  
7 and following final approval to, inter alia, respond to class member inquiries, work with the  
8 Settlement Administrator on the distribution of settlement funds, and on the compliance hearing.  
9 [Saunders Decl., ¶ 29, Exh. 2.]

10 In pursuing this matter, Class Counsel incurred total attorney's fees of \$246,607.5, the  
11 lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a  
12 successful conclusion (324.4 attorney hours), and the requested attorney hourly rates are reasonable  
13 and comport with hourly rates charged by other attorneys with similar experience in this practice  
14 area in California. On a lodestar basis, the fee request of \$300,000 results in a very reasonable  
15 1.22 modifier over the base lodestar, which is entirely in line with California precedent.  
16 [Saunders Decl., ¶¶ 30-49; Nordrehaug Decl., ¶¶ 9-14; Exh. 1.] Indeed, California courts  
17 routinely approve multipliers in the in the 2-4 range to compensate for the time and risk of  
18 class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys'  
19 fee award including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255  
20 ("Multipliers can range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988)  
21 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).) Class Counsel submits that the  
22 requested 1.22 multiplier effectively operates to show that the percentage fee request is  
23 reasonable considering the challenges presented in this contingency fee matter, and  
24 appropriately compensates Class Counsel for the contingent risk assumed and delay in  
25 payment during the approximately two plus years counsel have been representing Plaintiffs.  
26 Thus, the multiplier results in a fee constituting a fair return on the contingency.

27 ///

28 ///

1 **E. The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill Required,**  
2 **4) the Contingent Nature of the Fee and 5) Awards in Similar Cases**

3 What has now emerged in most fee award decisions is the recognition that fee  
4 determinations in both common fund and statutory fee situations are incapable of  
5 mathematical precision because of the intangible factors that must be resolved in the court's  
6 discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In  
7 determining an appropriate fee in a common fund case, a Court must decide, based on the  
8 unique posture of each case, what percentage of the common fund would most reasonably  
9 compensate Class Counsel given the nature of the litigation and the performance of counsel.  
10 Paul, Johnson, Alston & Hunt v. Gaulty (9th Cir. 1989 886 F.2d 268, 272) (the benchmark  
11 percentage fee may be adjusted to account for the circumstances involved in a case).

12 Courts apply a five-part test in calculating a reasonable percentage fee in common fund  
13 cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of  
14 work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and  
15 (5) awards made in similar cases. Laffitte, 1 Cal.5th at 489.

16 **1. The Results Achieved.**

17 Class Counsel obtained an excellent result in this case for the Class Members. The  
18 Settlement provides real monetary benefits to the Class Members, and the Settlement is  
19 particularly advantageous to the Class Member because the proceeds will be distributed  
20 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.  
21 Considering many individual claims would be very modest and would not be cost-effective to  
22 pursue successfully, the Settlement provided them with fair compensation for their claims.  
23 Moreover, the absence of any objection to either the Settlement or the attorney's fee request  
24 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated  
25 by the fact that only one class member opted out. Additionally, the settlement amounts to a  
26 substantial percentage of the maximum value of the amount the Class might have obtained if it  
27 had tried the case and recovered on all theories seeking recovery of wages and penalties. "It is  
28 well-settled law that a cash settlement amounting to only a fraction of the potential recovery

1 does not per se render the settlement inadequate or unfair." In re Omnivision Techs., Inc., 559  
2 (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 Plaintiffs' 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 the  
10 highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would dig  
11 in and attempt to bury their small firm in work. Given the small size of Class Counsels'  
12 respective firms, not receiving any compensation for several years while simultaneously  
13 advancing litigation costs posed considerable risk and difficulty. [Saunders Decl., ¶¶ 50-51.]

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 of  
17 wage and hour law and class action procedure. This Settlement was possible only because  
18 counsel persuaded Defendants that Plaintiffs and the putative class had a realistic chance  
19 of prevailing on their claims despite Fraiche's contrary arguments, and that the case would  
20 be pursued through class certification and trial if necessary. In successfully navigating  
21 these hurdles, Class Counsel displayed appropriate skill while pursuing a risky and  
22 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 1249,  
27 1256. The attorney working on a contingent basis can only log hours while working  
28 without pay towards a result that will hopefully entitle him to a market fee considering the

1 risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee  
2 attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this risk  
3 in this all or nothing contingent fee case wherein the necessity and financial burden of  
4 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. Ketchum  
12 v. Moses (2001) 24 Cal.4th 1122, 1132-33; Cazares v. Saenz (1989) 208 Cal.App.3d 279,  
13 287.

14 Here, the contingent fee practices of Plaintiffs' counsel simply do not accommodate the  
15 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 [Saunders Decl., ¶¶ 50-51.] Accordingly, the contingent nature of the fee and the financial  
20 burdens on Class Counsel and Plaintiffs 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, pp.  
28 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common

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

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

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

18 Per the Saunders and Nordrehaug Declarations, Class Counsel incurred a total of  
19 \$22,259.19 in expenses in connection with this matter. These expenses include amounts  
20 paid for court filing fees, expert fees, service of process, postage, and mediation fees, all  
21 of which are costs normally billed to and paid by the client. These costs were reasonably  
22 incurred in the prosecution of this matter, and should be reimbursed in full. Plaintiffs  
23 respectfully requests that the Court authorize reimbursement of counsel's costs in the total  
24 amount of \$22,259.19, with \$18,210.29 to Crosner Legal and \$3,973.90 to the Blumenthal  
25 firm. [Saunders Decl., ¶¶ 52-53; Nordrehaug Decl. ¶ 11; Exh. 1.]

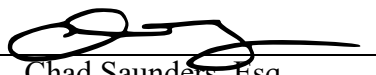
26 **VIII. CONCLUSION**

27 For all the foregoing reasons, Plaintiffs respectfully requests that the Court grant this  
28 motion and grant final approval of the proposed class action settlement and approve the payment of

1 PAGA penalties to the State. Plaintiffs further request the Court approve payment of the  
2 Settlement Administrator's fees and expenses, approve the requested class representative  
3 enhancement payments, approve the award of attorney's fees and costs as requested, and enter  
4 judgment in this action. Finally, Plaintiffs request the Court set a final compliance hearing for  
5 January 15, 2026, or a later date convenient for the Court.

6  
7 Dated: December 19, 2024

**CROSNER LEGAL, PC**

8  
9  
10 By:   
11 Chad Saunders, Esq.  
12 Brandon Brouillette, Esq.  
13 Zachary M. Crosner, Esq.  
14 Attorneys for Plaintiff  
15 PEDRO CEDENO

16  
17 Dated: December 19, 2024

**BLUMENTHAL NORDREHAUG  
BHOWMIK DE BLOUW LLP**

18 By: \_\_\_\_\_  
19 Norman B. Blumenthal  
20 Kyle R. Nordrehaug  
21 Aparajit Bhowmik  
22 Nicholas J. De Blouw  
23 Attorneys for Plaintiff Santos Martinez Padilla  
24  
25  
26  
27  
28