

Brandon Brouillette (SBN 273156)
bbrouillette@crosnerlegal.com
Zachary M. Crosner (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd., Suite 301
Beverly Hills, CA 90210
Tel: 866-276-7637
Fax: 310-510-6429

Attorneys for Plaintiff PRICILLA COOPER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

PRICILLA COOPER, as an individual and
on behalf of all others similarly situated,

Plaintiff,

v.

AMTEC HUMAN CAPITAL, INC., a
California Corporation; THE CLOROX
COMPANY, a Delaware Corporation;
THE CLOROX INTERNATIONAL
COMPANY, a Delaware Corporation; and
DOES 1-100, inclusive,

Defendants.

Case No.: 23CV036357

Assigned for All Purposes to:
Hon. Michael Markman
Dept. 23

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

Date: May 22, 2025
Time: 10:00 a.m.
Dept. 23

Reservation No.: 074209334755

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL BACKGROUND AND PROCEDURAL POSTURE	2
III.	THE PROPOSED SETTLEMENT TERMS.....	3
	A. Certification of the Settlement Class	4
	B. The Benefit Conferred on the Settlement Class.....	4
	C. Settlement Administration.....	5
	D. Release of Claims	5
	E. PAGA and Notice to the LWDA.....	6
IV.	ARGUMENT.....	6
	A. Standard of Review for a Class Action Settlement	6
	B. The Proposed Settlement Merits Final Approval.....	7
	1. The Settlement Is the Product of Arm's-Length, Informed Negotiations.....	7
	2. The Class Reacted Favorably to the Settlement	8
	C. The Proposed Settlement Meets the Dunk and Kullar Factors and is within the Range of Reasonableness.....	8
V.	PLAINTIFF'S ENHANCEMENT AWARD.....	13
VI.	SETTLEMENT ADMINISTRATION COSTS.....	13
VII.	ATTORNEY'S FEES AND COSTS	14
	A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be Approved.....	14
	B. The Requested Fee Award Is Reasonable and Appropriate.....	15
	C. Class Counsel's Fees are Justified When Calculated as a Percentage of the Common Fund.....	16
	D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request	17
	E. The Award is Supported By 1) the Results Achieved, 2) the Risk, 3) the Skill Required, 4) the Contingent Nature of the Fee, and 5) Awards in Similar	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cases..... 19

1. The Results Achieved..... 19

2. Class Counsel Bore Considerable Risk. 20

3. The Skill Required and the Quality of Work. 20

4. The Contingent Nature of the Fee and Risk Assumed..... 21

5. Awards in Other Cases..... 22

F. Class Counsel’s Costs and Expenses are Reasonable 22

VIII. CONCLUSION 23

TABLE OF AUTHORITIES

Page(s)

Cases

<u>7-Eleven Owners for Fair Franchising v. Southland Corp.</u> (2000) 85 Cal.App.4th 1135.....	12
<u>Amaral v. Cintas Corp. No. 2</u> (2008) 163 Cal.App.4th 1157.....	10
<u>In re: American Bank Note Holographics,</u> 127 F.Supp.2d 418 (S.D.N.Y. 2001).....	8
<u>Blum v. Stenson</u> (1984) 465 U.S. 886	15
<u>Boeing Co. v. Van Gernert</u> (1980) 444 U.S. 472	16
<u>Carrington v. Starbucks Corp.</u> (2018) 30 Cal. App.5th 504.....	11
<u>Cazares v. Saenz</u> (1989) 208 Cal.App.3d 279	21
<u>Class Plaintiffs v. City of Seattle</u> (9th Cir. 1992) 955 F.2d 1268, <u>cert. denied</u> , 506 U.S. 953	6
<u>Cochran v. Schwan’s Home Service, Inc.</u> (2014) 228 Cal. App. 4th 1137.....	10
<u>Deposit Guaranty Nat’l Bank, Jackson, Miss. v. Roper</u> (1980) 445 U.S. 326, <u>rehg. den.</u> 446 U.S. 947	14
<u>Donohue v. AMN Servs., LLC</u> (2021) 11 Cal.5th 58	9
<u>Dunk v. McCoy Motor Co.</u> (1996) 48 Cal.App.4th 1794.....	6, 7
<u>Evans v. Jeff D.</u> (1986) 475 U.S. 717	15
<u>Harris v. Marhoefer</u> (9th Cir. 1994) 24 F.3d 16.....	22

1	<u>Hensley v. Eckerhart</u>	
2	(1983) 461 U.S. 424	15
3	<u>Hernandez v. Restoration Hardware, Inc.</u>	
4	(2018) 4 Cal.5th 260	16
5	<u>Jennings v. Open Door Mktg. Inc.</u>	
6	(N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356	11
7	<u>Ketchum v. Moses</u>	
8	(2001) 24 Cal.4th 1122	21
9	<u>Laffitte v. Robert Half Int’l., Inc.</u>	
10	(2016) 1 Cal.5th 480	16, 17, 19
11	<u>Lane v. Facebook, Inc.</u>	
12	(9th Cir. 2012) 696 F.3d 811	13
13	<u>Lealao v. Beneficial Cal., Inc.</u>	
14	(2000) 82 Cal.App.4th 19	14, 15
15	<u>Levy v. Toyota Motor Sales, U.S.A.</u>	
16	(1992) 4 Cal.App.4th 807	14
17	<u>Mandujano v. Basic Vegetable Prods., Inc.</u>	
18	541 F.2d 832 (9th Cir. 1976)	8
19	<u>McKittrick v. Gardner</u>	
20	(4th Cir. 1967) 378 F.2d 872	21
21	<u>In re Omnivision Techs., Inc.</u>	
22	559 (N.D. Cal. 2008)	20
23	<u>Paul, Johnson, Alston & Hunt v. Gaulty</u>	
24	(9th Cir. 1989 886 F.2d 268, 272)	19
25	<u>Potter v. Pacific Coast Lumber Co.</u>	
26	(1951) 37 Cal.2d 592	6
27	<u>Powers v. Eichen</u>	
28	(9th Cir. 2000) 229 F.3d 1249	20, 21
	<u>Rider v. County of San Diego</u>	
	(1992) 11 Cal.App.4th 1410	22
	<u>Rodriguez v. W Publ'g Corp.</u>	
	(9th Cir. 2009) 563 F.3d 948	13

1	<u>Serrano v. Priest</u>	
2	(1977) 20 Cal.3d 25	16, 22
3	<u>Slavkov v. First Water Heater Partners I</u>	
4	(N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303.....	11
5	<u>Staton v. Boeing</u>	
6	(9th Cir. 2003) 327 F.3d 938.....	13
7	<u>Stuart v. RadioShack</u>	
8	(N.D. Cal. 2009) 641 F.Supp.2d 901.....	10
9	<u>In re Taco Bell Wage and Hour Actions</u>	
10	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557	11
11	<u>Van Bronkhorst v. Safeco Corp.</u>	
12	(9th Cir. 1976) 529 F.2d 943,950.....	6
13	<u>Van Kempen v. Matheson Tri-Gas, Inc.</u>	
14	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182	11
15	<u>Vincent v. Hughes Air West, Inc.</u>	
16	(9th Cir. 1977) 557 F.2d 759.....	16
17	<u>In re Warner Communications Sec. Litig.</u>	
18	(S.D.N.Y. 1985) 618 F.Supp. 735.....	17, 21
19	<u>Wershba v. Apple Computer</u>	
20	(2001) 91 Cal.App.4th 224.....	6, 7, 12, 16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Statutes

Cal. Rule of Court 3.769.....6, 14

Labor Code § 203..... 10

Labor Code sections 203 and 226 10

Labor Code § 2699(e)(2)..... 11

Other Authorities

Attorney Fee Awards (2d ed. 1993) § 104 16

Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010),
available at www.fjc.gov/sites/default/files/2012/ClassGd3.pdf..... 13

Newberg on Class Actions (3d ed.) § 14.03..... 17, 22

Newberg on Class Actions (4th ed. 2002), § 11.416

1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Pricilla Cooper seeks final approval of a non-reversionary
3 class action settlement resolving wage and hour claims on behalf of 208 current and former non-exempt
4 individuals who worked for Defendant Amtec Human Capital, Inc. (“Amtec” or Defendant”) in
5 California and were classified as non-exempt and worked for Defendant and were placed with The
6 Clorox Company or The Clorox International Company during the Class Period of June 16, 2019 to July
7 13, 2024. The proposed \$300,000 total settlement provides about \$137,895 in cash payments to the
8 Class, with an average award of about \$663, plus additional amounts payable under PAGA. The
9 remaining balance will cover a modest service award to Plaintiff, settlement administration costs, civil
10 penalties to the state, and reasonable attorney’s fees and costs. The Parties and their counsel finalized the
11 settlement after extensive and difficult arms-length negotiations overseen by an experienced and highly
12 regarded mediator. The Court conditionally certified the Class and preliminarily approved the settlement
13 on December 12, 2024. Since then, the Court-approved notice form was mailed to the Class Members on
14 January 9, 2025, and they have reacted very favorably to the settlement. As of the filing of this motion,
15 there are no objections and no Class Member has requested exclusion.

16 Class Counsel secured an excellent settlement with Defendants after extensive
17 investigation, litigation, and settlement negotiation and administration, all without
18 any compensation for services rendered or costs expended. The class notice duly
19 informed the class members that Class Counsel would request attorney’s fees not to
20 exceed one-third of the Gross Settlement Amount, or \$100,000, along with
21 reimbursement of no more than \$15,000 for actual costs incurred litigating this matter.
22 As of the filing of this motion, *not one Class Member objected* to the proposed fee
23 award. Consistent with the Settlement and notice, Plaintiff now respectfully requests
24 the Court award Class Counsel's fees in the amount of \$100,000 and costs in the
25 amount of \$13,605.25, as described in the Declaration of Brandon Brouillette
26 (“Brouillette Decl.”) filed herewith. The requested attorney’s fees are well within the
27 range of reasonableness, especially considering the complex and risky nature of this
28 litigation, the contingent risk assumed, the nearly two-plus year delay in payment and,

1 when subjected to a lodestar crosscheck, result in a base lodestar with a modest 1.10
2 upward modifier.

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

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

7 Defendant Amtec provides staffing services and temporary help to clients in several industries,
8 including aerospace, construction and engineering, and manufacturing. Plaintiff was a direct hire of
9 Amtec and assigned to work at a facility of former Defendant The Clorox Company,¹ where she worked
10 as a warehouse worker, repacker, and palleter from September 22, 2021, to June 15, 2022, when her
11 assignment to at The Clorox Company ended. [Declaration of Brandon K. Brouillette ("Brouillette
12 Decl."), ¶ 2.]

13 Plaintiff alleges a number of wage and hour violations by Defendant. First, she alleges a
14 failure to provide all required meal and rest breaks, and that Defendant had a practice of "auto-
15 deducting" 30 minute meal periods regardless of whether such meal periods actually were taken or lasted
16 a full 30 minutes, resulting in lost hours worked when meal breaks were missed or cut short. Plaintiff
17 also alleges this same policy resulted in meal period violations and also that Amtec failed to provide
18 compliant meal periods before the end of the fifth hour of work and pay meal period premiums when
19 required. She further alleges rest break violations based on a non-compliant written policy and failure to
20 provide all required rest breaks. Lastly, she alleges Defendant failed to reimburse employees for use of
21 their personal cellular devices for company business. [Brouillette Decl., ¶ 3.]

22 Based on these allegations, Plaintiff's filed a class action lawsuit alleging wage and hour
23 violations against Defendant captioned *Pricilla Cooper v. Amtec Human Capital, Inc., et al.* initiated on
24 June 16, 2023, and also filed a separate PAGA-only lawsuit alleging wage and hour violations against
25 Defendant captioned *Pricilla Cooper v. Amtec Human Capital, Inc., et al.* initiated on July 19, 2023.
26 [Brouillette Decl., ¶ 4.]

27
28 ¹ The Clorox Company and The Clorox International Company both are being dismissed from the case
as part of this Settlement.

Amtec denies Plaintiff's allegations in their entirety and maintains that its meal and rest break policies, as well as its payroll procedures, comply with California law. The company asserts that it has provided employees with the required meal and rest breaks, or compensated them as necessary for any documented violations related to these breaks. . Additionally, Amtec strongly contends the case cannot be maintained as a class action, arguing, for example, that to the extent class members missed meals and/or rest breaks or allegedly used their phones for work, it was by choice, intermittent, and infrequent. Evidence of such missed breaks or telephone use would be anecdotal; therefore, individualized issues would predominate, making the matter inappropriate for class treatment. [See Brouillette Decl., ¶ 5.]

After Plaintiff filed her complaint, the Parties met and conferred on discovery, potential law and motion, and other case management issues, and ultimately agreed to attempt early mediation. The Parties also engaged in extensive informal discovery to facilitate an exchange of information necessary to engage in a meaningful mediation. The Parties then engaged Steve Pearl, Esq., a highly respected mediator with extensive wage and hour class action experience and, on May 13, 2024, participated in a full day mediation with Mr. Pearl. By the end of the day, the Parties were able to reach an agreement on all major issues. [Brouillette Decl., ¶¶ 6-7.] The Court granted preliminary approval to the settlement on December 12, 2024.

Class Notices were mailed to class members on January 9, 2024, with a 60-day window (to March 10, 2025) for class members to opt out or object to the proposed settlement. [Declaration of Lluvia Islas ("Islas Decl."), ¶¶ 5, 8-10.]

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, Amtec will pay \$300,000 into a common fund, the Gross Settlement Amount ("GSA"). Attorney's fees of up to \$100,000 (1/3 of the GSA), litigation costs of up to \$15,000 (only \$13,605.25 is requested), settlement administration costs of no more than \$8,500, a service award to Plaintiff of no more than \$10,000, and PAGA civil penalties of \$30,000, all will be paid from the GSA. The balance of around \$137,895 will be allocated pro rata to the Class Members based on their weeks worked during the Class Period. No portion of the GSA will revert to Amtec. [Brouillette Decl., ¶ 8.]

////

1 **A. Certification of the Settlement Class**

2 The Court conditionally certified a settlement class including all individuals employed by
3 Amtec in California and classified as non-exempt who worked for Defendant and were placed
4 with The Clorox Company or The Clorox International Company during the Class Period of June
5 16, 2019, to July 13, 2024. The Settlement Administrator ultimately mailed class notices to 208
6 individuals identified as members of the class. [Islas Decl., ¶ 5.] Nothing has changed to warrant
7 reconsideration of the Court’s certification of the class for settlement purposes.

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

9 As noted, the settlement obligates Amtec to pay \$300,000 to resolve the Settlement Class’s
10 claims, inclusive of attorney’s fees and costs. At least \$137,895 from the GSA will be distributed
11 to the Participating Class Members. This is a cash settlement that does not require Participating
12 Class Members to submit a claim form to receive their settlement share. Participating Class
13 Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty-
14 five percent of each settlement share will be allocated to wages, and the remaining seventy-five
15 percent will be allocated to penalties and interest, the allocation of which is consistent with
16 Amtec’s potential liability. Amtec will pay any and all applicable employer-side payroll taxes
17 separately and in addition to the GSA. Subject to the Court’s approval, any amounts not claimed
18 (because a class member does not cash their settlement check) will be forwarded to the State
19 Controller’s Unclaimed Property Fund. [Brouillette Decl., ¶ 9.]

20 Each Participating Class Member will receive a share of the Net Settlement Amount based
21 on his or her total weeks worked in California as a non-exempt employee during the Class Period.
22 Thus, each Class Member’s Individual Settlement Payment will be calculated using criteria
23 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
24 missed meal and rest breaks, and potential statutory penalties under applicable law. These
25 methods are intended to ensure each Class Member receives a settlement award corresponding to
26 the relative value of their potential claims. The proposed allocation provides a reasonable way to
27 compensate Class Members based on the amount of time they worked for Amtec in California
28

1 and the amount of unpaid overtime, the number of missed meal breaks and/or rest breaks, etc.
2 [Brouillette Decl., ¶ 10.]

3 The average class award will be around \$663, and class settlement awards will range from
4 about \$33 to over \$5,500. The average PAGA award will be about \$95. [Islas Decl, ¶¶ 14-15.]

5 **C. Settlement Administration**

6 Phoenix Settlement Administrators, as the Court-approved Settlement Administrator,
7 mailed the Notice Packet to the Class members after making all reasonable effort to ascertain
8 the best mailing address, including running each address through the National Change of
9 Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Islas
10 Decl., ¶¶ 3-7.] The Class Notice, previously approved by the Court, duly informed Class
11 Members of the settlement terms, including the estimated relief each Class Member will
12 receive, the amounts to be requested for attorney's fees and the class representative
13 enhancement awards, and the right to opt out of or object to the settlement. [Islas Decl., ¶ 5,
14 Exh. A.] Phoenix mailed 208 Notice Packets on January 9, 2025. [Islas Decl., ¶ 5.]
15 Ultimately, only one Notice Packet was deemed undeliverable, representing a 99.5% success
16 rate. [Islas Decl., ¶ 7.] The 60-day response window for objecting to the settlement expired
17 on March 10, 2025. [Islas Decl., ¶¶ 8-10.] As of the filing of this motion, Phoenix has
18 received zero requests for exclusion (for a 100% participation rate) and zero objections to the
19 settlement. No disputes have been submitted regarding the information used to calculate class
20 member settlement shares. [Islas Decl., ¶¶ 8-10.]

21 **D. Release of Claims**

22 All Participating Class Members will release Amtec and the Released Parties (including
23 the Clorox Defendants) from all claims alleged in the operative complaint, or that could have
24 been brought based on the factual allegations in the complaint during the Class Period. The
25 release is limited to the claims that were actually pleaded or could have been pleaded based on
26 the alleged facts in the operative complaint. [Brouillette Decl., ¶ 11.]

27 ////

28 ////

1 **E. PAGA and Notice to the LWDA**

2 As noted, the Parties allocated \$30,000 to the resolution of Plaintiff's alleged claims
3 under PAGA, which amount Plaintiff submits is fair, reasonable, and adequate, and consistent
4 with PAGA's underlying purposes. Consistent with PAGA, \$22,500 of that amount will go to
5 the LWDA for the State's share of the civil penalties, while the remaining \$7,500 will be
6 distributed pro rata to eligible Aggrieved Employees. Prior to filing this motion, Plaintiff
7 provided notice of the proposed settlement of the PAGA claims and the approval hearing to the
8 LWDA. [Brouillette Decl., ¶ 12; Exh. 1.]

9 **IV. ARGUMENT**

10 **A. Standard of Review for a Class Action Settlement**

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

25 On a motion for final approval, the trial court is charged with determining whether,
26 in light of the total circumstances of the action and the response of the class members to the
27 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
28 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that

determination and may consider a number of relevant factors, including: the strength of plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of further litigation; the amount offered in settlement; the extent of discovery and stage of the proceedings; the experience and opinion of counsel; and the reaction of class members to the settlement. Id. In light of the strong judicial policy favoring the settlement of class actions, courts generally apply a presumption of fairness to a proposed class action settlement when: (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; Wershba, 91 Cal.App.4th at 245.

B. The Proposed Settlement Merits Final Approval

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

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

The settlement is not the result of fraud or collusion. Rather, the proposed settlement was reached following arm's-length negotiations presided over by Steve Pearl, Esq., a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Brouillette Decl., ¶ 7.] Moreover, Plaintiff and her counsel were well-informed about the facts and the law, and counsel Zachary Crosner and Brandon Brouillette have years of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Brouillette Decl., ¶¶ 27-38.] Defendant likewise was represented by highly qualified and experienced defense counsel. Both sides advocated vigorously for their clients, and nothing was "left on the table."

2. The Class Reacted Favorably to the Settlement

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and no Class Member has requested exclusion out of 208 settlement class members. [Islas Decl., ¶¶ 8-9.] As many courts recognize, class member reaction to the settlement is one of the most important factors to consider in determining if final approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) (“It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy”) (internal quotation marks omitted).

C. The Proposed Settlement Meets the Dunk and Kullar Factors and is within the Range of Reasonableness

Prior to mediation, the parties engaged in extensive formal and informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding Amtec’s payroll practices, pay stubs and time records for a sampling of class members, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown of job positions, work weeks, rates of pay, and other information used to formulate a damages model. This extensive information was then analyzed by a consulting expert to look for meal and rest break violation rates, time spent working off the clock, etc., and other issues relevant to liability and damages. Plaintiff’s counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class. [Brouillette Decl., ¶¶ 6, 13.]

Next, the proposed settlement falls within the range of reasonableness, warranting preliminary approval. The proposed settlement involves a significant sum that, when distributed, will confer direct monetary benefits on the class members. As described above, each class member will be entitled to a monetary payment without having to file a claim, and each payment will be relative to the value of his or her potential claims.

1 Plaintiff's analysis was supported by the pre-mediation production described above,
2 which permitted Plaintiff's counsel to estimate potential damages on various theories of
3 liability. Using that data, Plaintiff ran various calculations and estimated Amtec's likely
4 maximum exposure on the class claims at approximately \$1,635,810, including approximately
5 \$360,600 on the meal period claims, about \$360,600 on the rest period claims, about \$44,060 on
6 the expense reimbursement claim, around \$139,800 on the wage statement claims, and
7 \$730,750 on the waiting time penalty claims.² [Brouillette Decl., ¶ 14.] Plaintiff and counsel
8 substantially discounted the value of these claims; however, in light of Defendant's multi-
9 layered defenses on both class certification and on the merits, and the considerable risks posed
10 by proceeding with the litigation.

11 On the meal and rest break claims, Plaintiff contends that Amtec's alleged "auto-deduct"
12 policy obscured the fact that employees missed meal periods completely or received shortened
13 breaks. Plaintiff further alleged Amtec regularly provided meal periods that did not start until
14 after the fifth hour of work, thus they were untimely. In Donohue v. AMN Servs., LLC (2021)
15 11 Cal.5th 58, 61, the California Supreme Court recognized "the meal period provisions are
16 designed to prevent even minor infringements on meal period requirements, and rounding is
17 incompatible with that objective." Thus, per Plaintiff and Donohue, even minor infringements
18 on the meal period requirements resulted in a violation and obligation for Amtec to pay the
19 required premium pay. Plaintiff's review of the time and payroll records provided suggested
20 these deficiencies in the policies affected employee breaks. For example, Plaintiff's analysis
21 showed a 28% violation rate for meal period violations. Similarly, Plaintiff alleged Amtec's
22 written break policy likewise was non-compliant, failed to properly reflect the time periods for
23 taking breaks, and also resulted in "de facto" violations. [Brouillette Decl., ¶ 15.]

26
27 ² While Plaintiff's complaint alleges claims for unpaid wages, her investigation and discovery did not
28 suggest any potentially widespread violations for unpaid wages that could be addressed via a class or
representative action. Accordingly no value was attributed to those claims for purposes of settlement.
[Brouillette Decl., ¶ 26.]

1 In response, Amtec argued its written meal and rest break policies are fully compliant,
2 and that it provided employees with the opportunity to receive all required breaks. Amtec
3 further maintained that, in light of its compliant policies, whether a class member missed a meal
4 period, received a late meal period, or missed a rest break would have been aberrational and
5 against company policy. Thus, per Amtec, these issues are not amenable to class or
6 representative treatment since their resolution would require individualized inquiries as to why a
7 break was missed or non-compliant. [Brouillette Decl., ¶ 16.]

8 On the expense reimbursement claim, Plaintiff alleges Amtec's management and
9 supervisors would constantly text Plaintiff and other employees on their cell phones throughout
10 their shifts to communicate with them on work-related issues, and that no reimbursement was
11 paid. Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal. App. 4th 1137; Stuart v.
12 RadioShack (N.D. Cal. 2009) 641 F.Supp.2d 901, 903-04 (if an employer "knows or has reason
13 to know that the employee has incurred a reimbursable expense. . . it has the duty to exercise
14 due diligence and take any and all reasonable steps to ensure that the employee is paid for the
15 expense.") On the other hand, Amtec argued there would be no conceivable need for employees
16 to use their own phones while working or for any work-related purposes, and if they did so, it
17 was purely for personal convenience rather than business necessity. Thus, per Amtec, no
18 reimbursement is owed. [Brouillette Decl., ¶ 17.]

19 The claims under Labor Code sections 203 and 226 are derivative of the primary unpaid
20 wage claims, and accordingly are subject to the same risks and uncertainties plus additional
21 risks posed by the need to take into account the discretionary nature of such awards and the
22 "good faith" and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008)
23 163 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code
24 § 203 even though class prevailed on underlying claim for failure to pay living wages). Thus,
25 while these claims largely are derivative of the unpaid wage claim, they also are subject to
26 additional defenses. [Brouillette Decl., ¶ 18.]

27 As far as potential PAGA liability, the allegedly aggrieved employees theoretically are
28 entitled to penalties totaling around \$575,000 in civil penalties should Plaintiff prevail on all

1 claims and establish violations of the multiple Labor Code sections as to each and every pay
2 period at issue. [Brouillette Decl., ¶ 19.] As with the class claims, Plaintiff discounted the potential
3 PAGA penalties based on Defendant's various defenses on the merits and also accounted for the
4 Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor
5 Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal. App.5th 504 (trial court awarded
6 penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal); In re
7 Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA
8 penalties denied after trial).

9 Accordingly, the Parties allocated \$30,000 to PAGA penalties, and Plaintiff submits this
10 amount is reasonable under the circumstances and in line with comparable settlements in other
11 wage and hour class actions in California. *E.g.*, Van Kempen v. Matheson Tri-Gas, Inc. (N.D.
12 Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of \$5,000 PAGA
13 penalty from \$370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water
14 Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a \$7,500
15 PAGA payment reasonable when measured against the overall settlement of \$345,000 and the
16 possible weaknesses in Plaintiffs' case, or 2.2 percent of total settlement). Additionally, the
17 LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able
18 to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S.
19 Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where
20 "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not
21 objected to the settlement.

22 Overall, Amtec raised various defenses to Plaintiff's claims on both class certification
23 and the merits that, if successful, could have negatively impacted Plaintiff's claims or
24 potentially reduced potential damages. Accordingly, Plaintiff faced significant risks going
25 forward with this litigation, and given the need to secure and maintain class certification, prevail
26 at trial, and deal with post-trial appeals, it would have taken years to realize any recovery in this
27 action. [Brouillette Decl., ¶ 20.]
28

1 The settlement obviates the significant risk that this Court may find any kind of class
2 resolution unachievable or might deny certification of all or some of Plaintiff's claims.
3 Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued
4 litigation would be expensive as the parties pursued merits discovery, a probable motion to
5 decertify, as well as trial and possible appeals, and would substantially delay any recovery by
6 the class with no assurance of recovering significantly more than the proposed settlement.
7 Overall, while Plaintiff is confident in the merits of her claims, a legitimate controversy exists
8 as to each cause of action. Plaintiff also recognizes proving the amount of wages and penalties
9 due each Class Member would be an expensive and uncertain proposition. [Brouillette Decl.,
10 ¶ 21.]

11 Plaintiff and counsel discounted the value of the class claims consistent with the risks
12 discussed above, and carefully weighed the likelihood of the class receiving substantially
13 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these
14 very real and substantial risks – settlement on the proposed terms and without prolonged and
15 costly litigation was in the best interests of the class. The overall \$300,000 recovery represents
16 a significant percentage of Amtec's potential exposure and, given the multiple litigation risks
17 addressed above, a total recovery for the class of \$300,000 with an average award of some \$663
18 per class member, is a fair result within the range of reasonableness considering all potential
19 outcomes. [Brouillette Decl., ¶¶ 20-22.]

20 Importantly, the mere fact that a settlement does not provide the same recovery as might
21 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
22 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed
23 settlement is substantially narrower than it would be if the suits were to be successfully
24 litigated, this is no bar to a class settlement because the public interest may indeed be served by
25 a voluntary settlement in which each side gives ground in the interest of avoiding litigation”); 7-
26 Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150
27 (“The fact that a proposed settlement may amount to only a fraction of the potential recovery
28 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be

disapproved”); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court”). Importantly as well, the proposed settlement is non-reversionary and will provide benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and her counsel submit the settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

V. PLAINTIFF’S ENHANCEMENT AWARD

The service payment provided to Plaintiff as the class representative is typical in class action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563 F.3d 948, 958-59 (incentive awards are “intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.”). She devoted time and resources to the litigation, provided documents, and assisted Class Counsel with investigating the claims asserted and in preparing for mediation. The proposed \$10,000.00 enhancement is reasonable in recognition of her time spent on this matter, the risks she undertook on behalf of the class, and the benefit conferred to the class, as addressed in her declaration filed at preliminary approval. See Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from \$2,000 to \$25,000). If the Court approves less than the above amount, the difference will remain in the Net Settlement Amount for distribution to the Participating Class Members. [Brouillette Decl., ¶ 23.]

VI. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to Phoenix for its services as the Settlement Administrator. As set forth in the Declaration of Lluvia Islas, Phoenix has performed and will continue to perform its required duties through final distribution of the settlement funds and incurred \$8,500 in fees and expenses. [Islas Decl., ¶ 17.] Accordingly, Plaintiff respectfully

1 requests that the Court approve payment of \$8,500 to Phoenix from the GSA. [Brouillette Decl.,
2 ¶ 24.]

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

4 **A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be** 5 **Approved**

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

18 As addressed in detail above, at the time the parties reached the tentative settlement,
19 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk
20 that some or all the claims would not be certified for class treatment, as Defendant had
21 strong arguments that its compensation policies were legal and properly compensated the
22 class members. Even if Plaintiff certified some or all of the claims and ultimately prevailed
23 on the merits, it undoubtedly would have taken several years to realize any recovery while
24 they pursued class certification, trial, and an almost certain appeal. [Brouillette Decl.,
25 ¶¶ 15-19.]

26 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief she set out to
27 obtain, and the settlement provides substantial cash payments to Class Members, with an
28 average award of about \$663, and with a maximum award of over \$5,500. Importantly, as

1 well, the Class Members have been overwhelmingly supportive of the Settlement – as of
2 the filing of this motion, there are no objections to the settlement and no opt-outs. [Isias
3 Decl., ¶¶ 8-9.]

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

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

14 As part of the Settlement, Defendants agreed not to object to an award of no more
15 than 1/3 of the GSA for attorney's fees, or \$100,000, and up to \$15,000 in reimbursement
16 for litigation costs and expenses (only \$13,605.25 is requested). Such a fee is
17 commensurate with what the market would provide for similar services and the Court
18 therefore can most certainly enforce the agreement. As California's Court of Appeal has
19 instructed:

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

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

26 Here, the parties did not negotiate the inclusion of attorney's fees until after
27 extensive arms-length bargaining regarding relief to the Class was completed.
28 [Brouillette Decl., ¶ 25.] 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 method or the lodestar method. Laffitte v. Robert Half Int'l., Inc. (2016) 1 Cal.5th 480, 489; Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260. The California Supreme Court recently recognized the advantages and equities of calculating attorney's fees using the percentage-of-the-common-fund method in another wage-and-hour case:

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

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

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

In determining a reasonable common fund fee award, courts should also consider the fact that fees serve as an economic incentive for lawyers to bring class action litigation to achieve increased access to the judicial system for meritorious claims and to enhance deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without

1 prosecution on a contingent basis and use of the class action mechanism, the courthouse
2 door would effectively be closed to most class members due to the relatively small size of
3 their individual claims in relation to the enormous time and cost associated with class action
4 litigation.

5 Here, Class Counsel seeks a fee award for their successful prosecution and
6 resolution of this action of 1/3 of the total amount recovered by the Class via the lawsuit, or
7 \$100,000. The percentage requested is justified for the reasons set forth further below,
8 comports with this Court's standard fee award as set forth in the Preliminary Approval
9 Order, and further is in line with fee awards calculated on a percentage-of-the-benefit basis.
10 Indeed, review of class action settlements shows that courts have historically awarded fees
11 in the range of 20 to 50 percent, depending upon the circumstances of the case. In re
12 Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding
13 that percentage fees in common fund cases range from 20 to 50 percent); Newberg,
14 Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the
15 upper limit on a reasonable fee award from a common fund in order to assure that the fees
16 do not consume a disproportionate part of the recovery obtained for the class, although
17 somewhat larger percentages are not unprecedented.").

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

19 To ensure the fairness of an attorney's fee award, courts frequently conduct a
20 lodestar cross-check of counsel's fees. "A lodestar cross-check thus provides a mechanism
21 for bringing an objective measure of the work performed into the calculation of a
22 reasonable attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 123.1 hours
23 of time on this matter, resulting in a modest and very reasonable lodestar of \$90,740.00.

24 As is fully detailed in the Brouillette Declaration, Class Counsel's efforts included:
25 (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including
26 legal research, obtaining Plaintiff's employment records, research into similar claims and claims
27 against other employers in the same industry, and attempts to locate and contact other
28 employees of Defendants; (2) drafting a PAGA notice letter; (3) drafting the initial complaint

1 and related documents; (4) case management, including communications with defense counsel,
2 meeting and conferring/preparing case management statements, etc.; (5) lengthy discussions
3 with defense counsel regarding settlement/mediation and informal discovery needed for
4 meaningful settlement discussions; (6) engaging in substantial informal discovery, including
5 propounding informal discovery “requests” and reviewing documents and other information
6 produced; (7) drafting a mediation brief and accompanying damages model after review and
7 analysis of defendant’s informal discovery production; (8) attending an all-day mediation;
8 (9) negotiating and drafting the settlement agreement and related documents; (10) drafting the
9 amended complaint; (11) drafting the motion for preliminary approval and supplemental papers
10 re: changing the notice period; (12) administration of the settlement, communications with the
11 Settlement Administrator and settlement class members; (13) drafting the motion for final
12 approval and motion for attorney’s fees, and attending the final approval hearing; and
13 (14) extensive communications with the Plaintiff regarding case status, case investigation and
14 document review, mediation, and settlement terms. Additionally, Class Counsel will incur
15 additional time to attend the final approval hearing and following final approval to, inter alia,
16 respond to class member inquiries, work with the Settlement Administrator on the distribution
17 of settlement funds, and on the compliance hearing. [Brouillette Decl., ¶ 26, Exh. 2.]

18 In pursuing this matter, Class Counsel incurred total attorney’s fees of
19 \$90,740.00 and the lodestar is based on a very reasonable number of hours worked to litigate
20 this matter to a successful conclusion (123.1 hours), and the requested attorney hourly rates are
21 reasonable and comport with hourly rates charged by other attorneys with similar experience in
22 this practice area in California. [Brouillette Decl., ¶¶ 27-43.] On a lodestar basis, the fee
23 request of \$100,000 results in a multiplier of 1.10, which is a modest enhancement entirely
24 in line with California law. [*Id.*] Indeed, California courts routinely approve multipliers in
25 the in the 2-4 range to compensate for the time and risk of class action cases. Chavez v.
26 Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys’ fee award including an
27 upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 (“Multipliers can range from 2
28 to 4 or even higher.”); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85

(affirming a multiplier of 2.34).) Class Counsel submits that the requested 1.10 multiplier effectively operates to show that the percentage fee request is reasonable considering the challenges presented in this contingency fee matter, and appropriately compensates Class Counsel for the contingent risk assumed and delay in payment during the approximately two years counsel has been representing Plaintiff. Thus, the multiplier results in a fee constituting a fair return on the contingency.

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

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

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

1. The Results Achieved.

Class Counsel obtained an excellent result in this case for the Class Members. The Settlement provides real monetary benefits to the Class Members, and the Settlement is particularly advantageous to the Class Members because the proceeds will be distributed shortly as opposed to waiting additional years for a similar, or possibly, less favorable result. Considering many individual claims would be very modest and would not be cost-

1 effective to pursue successfully, the Settlement provided them with fair compensation for
2 their claims. Moreover, the absence of any objection to either the Settlement or the
3 attorney's fee request bolsters the excellent results. Indeed, the approval of the Class is
4 overwhelming, as indicated by the fact that only one class member opted out. Additionally,
5 the settlement amounts to a substantial percentage of the maximum value of the amount the
6 Class might have obtained if it had tried the case and recovered on all theories seeking
7 recovery of wages and penalties. "It is well-settled law that a cash settlement amounting to
8 only a fraction of the potential recovery does not per se render the settlement inadequate or
9 unfair." In re Omnivision Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

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

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

21 [Brouillette Decl., ¶¶ 44-45.]

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

23 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
24 experience. The issues presented in this case required more than just a general appreciation
25 of wage and hour law and class action procedure. This Settlement was possible only
26 because counsel persuaded Defendant that Plaintiff and the putative class had a realistic
27 chance of prevailing on their claims despite Defendant's contrary arguments, and that
28 the case would be pursued through class certification and trial if necessary. In

1 successfully navigating these hurdles, Class Counsel displayed appropriate skill while
2 pursuing a risky and difficult case.

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

4 There is a substantial difference between the risk assumed by attorneys being
5 paid by the hour and attorneys working on a contingent fee basis. The attorney being
6 paid by the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229
7 F.3d 1249, 1256. The attorney working on a contingent basis can only log hours while
8 working without pay towards a result that will hopefully entitle him to a market fee
9 considering the risk and other factors of the undertaking. Id. at 1257. Otherwise, the
10 contingent fee attorney receives nothing. Id. In this case, Class Counsel subjected
11 themselves to this risk in this all or nothing contingent fee case wherein the necessity
12 and financial burden of private enforcement makes the requested award appropriate.

13 Counsel retained on a contingency fee basis, whether in private matters or in
14 class action litigation, is entitled to a premium beyond their standard, hourly, non-
15 contingent fee schedule to compensate for both the contingent risk assumed and the
16 delay in payment. The simple fact is that despite the most vigorous and competent of
17 efforts, success is never guaranteed. McKittrick v. Gardner (4th Cir. 1967) 378 F.2d
18 872, 875. Indeed, if counsel is not adequately compensated for the risks inherent in
19 difficult class actions, competent attorneys will be discouraged from prosecuting
20 similar cases. Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132-33; Cazares v. Saenz
21 (1989) 208 Cal.App.3d 279, 287.

22 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
23 the investment of unnecessary time in a case, and the adverse resolution of any one of
24 several difficult issues present in this matter could have doomed the entire effort. As
25 discussed, the attorney's fees in this case were not only contingent but fairly risky, and
26 there was always a chance Plaintiff's counsel would receive nothing for any number of
27 reasons. [Brouillette Decl., ¶¶ 44-45.] Accordingly, the contingent nature of the fee and the
28 financial burdens on Class Counsel and Plaintiff also support the fee requested.

1 **5. Awards in Other Cases**

2 As discussed, the attorney's fees requested by Class Counsel are within the range of
3 fees awarded in comparable cases, and review of class action settlements over the past 10
4 years shows that the courts have historically awarded fees in the range of 20 to 50 percent,
5 depending upon the circumstances of the case. In re Warner Communications Sec. Litig.
6 (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common
7 fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) §
8 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award
9 from a common fund in order to assure that the fees do not consume a disproportionate part
10 of the recovery obtained for the class, although somewhat larger percentages are not
11 unprecedented."). Class Counsel's requested fees equal to 1/3 of the gross amount recovered
12 on behalf of the class and are well within the range of reasonableness under either the
13 percentage of the recovery or the lodestar method in light of the contingent risk assumed,
14 the delay in payment, the result achieved, and the overall quality of the representation.

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

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

26 Per the Brouillette Declaration, Class Counsel incurred a total of \$13,605.25 in
27 expenses in connection with this matter. These expenses include amounts paid for court
28 filing fees, service of process, postage, expert fees, and mediation fees, all of which are

costs normally billed to and paid by the client. These costs were reasonably incurred in the prosecution of this matter, and should be reimbursed in full. Plaintiff respectfully requests that the Court authorize reimbursement of counsel's costs in the amount of \$13,605.25. [Brouillette Decl., ¶¶ 46-47.]

VIII. CONCLUSION

For all the foregoing reasons, Plaintiff Pricilla Cooper respectfully requests that the Court grant this motion, grant final approval of the proposed class action settlement, and approve the payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of the Settlement Administrator's fees and expenses, approve the requested class representative enhancement payment, approve the award of attorney's fees and costs as requested, and enter judgment in this action. Finally, Plaintiff requests the Court set a final compliance hearing for May 28, 2026, or a later date convenient for the Court.

Dated: April 30, 2025

CROSNER LEGAL, P.C.

By: 
Zachary M. Crosner
Brandon K. Brouillette
Attorneys for Plaintiff Pricilla Cooper