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and the Class*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DEIGO**

MARIA ARCE, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

BEZSAM, INC., a California corporation; and
DOES 1 through 100,

Defendants.

Case No.: 37-2023-00018538-CU-OE-CTL

CLASS ACTION

*[Assigned for all purposes to the Hon.
Wendy M. Behan, Dept. C-66]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, CLASS
REPRESENTATIVE SERVICE
PAYMENT, AND ATTORNEYS' FEES
AND COSTS**

Date: November 15, 2024

Time: 9:30 a.m.

Dept.: C-66

Action Filed: May 2, 2023

Trial Date: None Set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on November 15, 2024 at 9:30 a.m., or as soon thereafter as the matter may be heard in
3 Department C-66 of the above-entitled Court, located at 330 West Broadway, San Diego,
4 California 92101, Plaintiff Maria Arce (“Plaintiff”) will, and hereby does, move this Court for
5 entry of an Order:

6 1. Granting final approval of the proposed Settlement Agreement (“Settlement”)
7 between Plaintiff and Defendant Bezsam, Inc. (“Bezsam” or “Defendant”);

8 2. Confirming the certification of the Settlement Class for settlement purposes under
9 Section 382 of the California Code of Civil Procedure:

10 All current and former non-exempt employees who worked for Bezsam in
11 California at any time from May 2, 2019 through November 22, 2023 (the “Class
Period”).

12 3. Confirming the appointment of Plaintiff Maria Arce as the Class Representative for
13 settlement purposes;

14 4. Confirming the appointment of Neil M. Larsen, Meghan E. McNally, and Jennifer
15 Rivera of Abramson Labor Group as Class Counsel;

16 5. Approving an award of \$155,000.00 in attorneys’ fees to Class Counsel;

17 6. Approving an award of \$21,576.88 in costs to Class Counsel;

18 7. Approving an award of \$10,000.00 in costs to Phoenix Settlement Administrators for
19 its settlement administration services;

20 8. Approving a Class Representative Service Payment of \$7,500.00 to Plaintiff for her
21 service as the Class Representative;

22 9. Approving an award of \$30,000.00 to the Labor & Workforce Development Agency
23 (“LWDA”); and

24 10. Entering final judgment in the form of the [Proposed] Judgment and Order Granting
25 Final Approval of Class Action Settlement filed herewith.

26 This Motion is made on the following grounds: (1) the Settlement Class continues to meet
27 the requirements for class certification for settlement purposes under Cal. Code of Civil Procedure
28 § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the Settlement

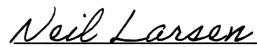
1 Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed wage and
2 hour claims; (4) the requested amounts for Class Counsel's attorneys' fees and costs, settlement
3 administration costs, and the Class Representative's Service Payment are all fair, adequate, and
4 reasonable; and (5) in light of the foregoing, the [Proposed] Judgment and Order Granting Final
5 Approval of Class Action Settlement submitted herewith should be entered so as to give finality
6 to, and allow for disbursements from, the Settlement.

7 This motion is based on this notice of motion; the attached memorandum of points and
8 authorities; the declaration of Neil M. Larsen and exhibits attached thereto; the declaration of
9 Yami Burns and exhibits attached thereto; the declaration of Plaintiff; the pleadings and other
10 papers filed in this action; and any further oral or documentary evidence or argument presented
11 at the time of hearing.

12 Respectfully Submitted,

13 Dated: October 16, 2024

ABRAMSON LABOR GROUP

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16 Neil M. Larsen

17 Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Maria Arce (“Plaintiff”) seeks final approval of a class action settlement
4 (“Settlement”) with Defendant Bezsam, Inc. (“Bezsam” or “Defendant”) (together with Plaintiff,
5 the “Parties”) a 501©(3) corporation that provides transportation services to the elderly and disabled
6 through contract with governmentally supported programs. Under the Settlement, Bezsam has
7 agreed to pay a gross settlement amount of \$465,000.00 to the following Settlement Class, which
8 consists of 422 individuals:

9 All current and former non-exempt employees who worked for Bezsam in
10 California at any time from May 2, 2019 through November 22, 2023 (the “Class
Period”).

11 In this non-reversionary Settlement, all Participating Class Members will receive
12 automatic payments without the need to submit a claim form, resulting in an average payment
13 (“Settlement Award”) of approximately \$549.82 to Participating Class Members. This is a
14 favorable resolution of the highly disputed wage and hour claims in this case, especially in light
15 of the significant litigation risks that Plaintiff faced. Moreover, after receiving notice of the
16 proposed Settlement and projected estimated settlement payments, **zero Settlement Class**
17 **members have elected to opt-out of the Settlement, resulting in a 100% participation rate,**
18 **and no Settlement Class members have objected to the Settlement.**

19 As explained further below, the Court should grant Plaintiff’s motion in its entirety
20 because: (1) the Settlement Class continues to meet the requirements for certification for
21 settlement purposes under Cal. Code Civ. Proc. § 382; (2) the Settlement is a fair, adequate, and
22 reasonable compromise of the disputed claims in this case; and (3) the requested amounts for
23 attorneys’ fees and costs, settlement administration costs, and class representative service
24 payment are all fair, adequate, and reasonable.

25 **II. SUMMARY OF THE LITIGATION**

26 **A. Factual And Procedural Background**

27 Bezsam is a non-profit 501(c)(3) corporation that provides transportation services to the
28 elderly and disabled through government supported programs in the San Diego metropolitan area.

1 See Declaration of Neil M. Larsen (“Larsen Decl.”), ¶ 7. Plaintiff is a former non-exempt
2 employee of Bezsam who worked for Bezsam in California during the Class Period. *Id.*

3 On May 2, 2023, Plaintiff filed this Action, alleging claims for failure to pay overtime
4 wages, meal and rest period violations, failure to reimburse business expenses, wage statement
5 penalties, waiting time penalties, and unfair business practices. *Id.*, ¶ 8. Plaintiff subsequently
6 filed a First Amended Complaint adding a claim for PAGA civil penalties for the aforementioned
7 Labor Code violations as well as Bezsam’s alleged failure to maintain accurate records (including
8 but not limited to records of actual hours worked). *Id.*, ¶ 9.

9 Bezsam has denied the allegations and has asserted that FMCSA preempts the California labor
10 provisions as to meals, rest periods and overtime regulations. Bezsam further asserted that its policies
11 and procedures were statutorily compliant and that in practice compliant meal and rest periods were
12 freely made available to employees. Bezsam asserts that employees were provided with all meal
13 periods and breaks and were encouraged to take the meal and rest periods. Moreover, the lookback
14 period coincided with the pandemic, a difficult time for Bezsam during which most transportation
15 needs for the elderly and disabled population came to a halt. Yet, Bezsam kept drivers employed, who
16 Bezsam contends had ample time to take all rest breaks and furthermore sat idle during work hours
17 while being fully compensated.

18 Despite these significant differences as to facts and legal merits, the parties made a business
19 decision to refrain from prolonged litigation and enter into a reasonable compromise.

20 **B. Discovery, Mediation, And Settlement**

21 In preparation for mediation, the Parties engaged in extensive informal discovery. Larsen
22 Decl., ¶ 10. Bezsam provided Plaintiff’s counsel with several data points, including the number
23 of class members, workweeks worked, average rate of pay, and other relevant metrics. *Ibid.*
24 Bezsam also produced a sampling of timekeeping and payroll records for putative class members,
25 a detailed class list that included each Settlement Class members’ hire date, termination date (if
26 applicable), average rate of pay, its applicable wage and hour policies, and other information.
27 *Ibid.* Plaintiff’s counsel hired an expert data analyst to analyze and extrapolate the data produced
28 by Bezsam. *Ibid.* This discovery allowed the Parties to assess the merits and value of Plaintiff’s

claims as well as Bezsam’s defenses and the chances for class certification. *Ibid.*

The Parties attended a full-day mediation with Judge Denton on November 22, 2023, at which the Parties vigorously debated Plaintiff’s claims and Bezsam’s defenses, and the chances of certification. *Id.*, ¶ 11. The Parties did not reach a resolution at mediation. However, the Parties continued their negotiations with Judge Denton’s assistance and eventually agreed to a resolution in principle. *Ibid.* Over the following months, the Parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement. *Ibid.*

C. Preliminary Approval And Mailing Of Notices

On May 20, 2024, Plaintiff submitted the proposed Settlement to this Court with her Motion for Preliminary Approval of Class Action Settlement. Larsen Decl., ¶ 12. On June 14, 2024 this Court issued its Order Granting Preliminary Approval. *Id.*, ¶ 12 & Exhibit A (Order Granting Preliminary Approval).

On July 16, 2024, the Court-approved Class Notice was mailed to Settlement Class members, who had until September 16, 2024 to submit objections, requests for exclusion, or workweek disputes. See Declaration of Yami Burns (“Burns Decl.”), ¶ 5. As of the date of this filing, Phoenix Settlement Administrators (“Phoenix”) received no objections, no requests for exclusion, and no workweek disputes. *Id.* at ¶¶ 6-10. Now that notice has been provided to the Settlement Class and the Notice process is complete, Plaintiff respectfully submits the Settlement for this Court’s final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

As noted, the Settlement Class is comprised of “All current and former non-exempt employees who worked for Bezsam in California at any time from May 2, 2019 through November 22, 2023 (the “Class Period”).” See Exhibit A to Larsen Decl.

B. Monetary terms

The Settlement provides for Bezsam to pay a non-reversionary Gross Settlement Amount (“GSA”) of \$465,000.00. See Settlement, § 4. After deducting requested attorneys’ fees (\$155,000.00) and litigation costs (\$21,576.88), Class Representative Service Payment (\$7,500.00), settlement administration costs (\$10,000.00), and the amount set aside as PAGA

civil penalties (\$40,000.00), the Net Settlement Amount (“NSA”) is estimated at \$230,923.12 See Settlement, § 4(A)-(C); Larsen Decl., ¶ 12 & Exh. A; Burns Decl., ¶ 12 & Exh. B. Together with the \$10,000.00 PAGA Amount, payable to Aggrieved Employees, the total amount to be paid to Settlement Class members equals \$240,923.12. Burns Decl., ¶¶ 12, 14.

The NSA shall be distributed to Participating Class Members as follows: All Participating Class Members will receive a payment from the NSA based on each Participating Class Member’s proportionate number of Workweeks worked for Defendant as a non-exempt employee in California during the Class Period. The Settlement Administrator will calculate each Participating Class Member’s payment from the NSA by multiplying the NSA by a fraction, the numerator of which is the Participating Class Member’s number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all Participating Class Members during the Class Period. See Settlement, § 6(B). Additionally, \$10,000.00 shall be designated as the 25% share of the PAGA civil penalties designated for distribution to the PAGA Members and shall be distributed to Settlement Class members proportionately based on the number of pay periods worked at any time from May 4, 2022, through November 22, 2023. See Settlement, § 6(C).

All payments from the PAGA Amount will be classified as 100% penalties; all payments from the NSA will be classified as twenty percent (33.33%) as wages and eighty percent (66.67%) as penalties and interest. See Settlement, § 6(E). The portion of individual Settlement Awards allocated to wages will be reported by the Settlement Administrator on an IRS Form W-2. *Id.* The remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement Administrator. *Id.* Bezsam’s share of employer-side payroll taxes shall be paid by Bezsam separate from, and in addition to, the Gross Settlement Amount. See Settlement, § 4(D).

C. Summary of Notice Process

On June 27, 2024, Phoenix received a data file from Defense Counsel that contained names, last known mailing addresses, Social Security numbers, dates of employment for each Settlement Class member (“Class Data”), which contained 422 Settlement Class members. Burns Decl., ¶ 3. On June 30, 2024, Phoenix conducted a National Change of Address (“NCOA”) search in an attempt to update Settlement Class members’ addresses as accurately as possible. *Id.*, ¶ 4.

1 On July 16, 2024, Phoenix mailed the Notice Packet via U.S. first class mail, in English
2 and Spanish, to all 422 Settlement Class members. *Id.*, ¶ 5. Following the initial mailing, 43
3 Notice Packets were returned to Phoenix. *Id.*, ¶ 6. None of them were returned with forwarding
4 addresses. *Id.* Phoenix obtained 37 updated addresses through a skip trace, and promptly remailed
5 the Notice Packets to those individuals. *Id.* As of the date of this filing, 6 Notice Packets are
6 considered undeliverable. *Id.*, at ¶ 7.

7 Settlement Class members had until September 16, 2024, to submit objections, disputes,
8 or requests for exclusion. *Id.*, ¶¶ 8-10. Phoenix received no objections from Class Members, no
9 requests for exclusion, and no workweek disputes. *Id.* With respect to the Settlement Class
10 Members, the average estimated payment is \$549.82, with the highest estimated payment being
11 \$2,582.49. *Id.*, ¶ 13. There are 319 Aggrieved Employees. *Id.*, ¶ 14. The highest individual PAGA
12 payment to be paid is approximately \$67.75, and the average individual PAGA payment to be
13 paid to the PAGA Settlement Class is approximately \$31.35. *Id.*

14 **D. Funding of the Settlement and Uncashed Settlement Funds**

15 The Settlement will be fully funded in accordance with the following schedule: the first
16 payment of \$65,000.00 within 30 days of the Court's granting preliminary approval of the
17 Settlement (already paid); a second payment of \$200,000.00 will be paid no later than 120 days
18 thereafter; and a third and final payment of \$200,000.00 shall be made within 90 days of the
19 Court's granting final approval of the settlement. *See* Settlement, § 4(B). Within seven (7)
20 business days of Defendant's deposit of the GSA, the Settlement Administrator will calculate
21 Settlement Awards and provide those calculations to Class Counsel and Defense Counsel for
22 review and approval. *Id.*, § 6(D). Within five (5) business days of receiving approval of its
23 calculations by counsel, the Settlement Administrator will prepare and mail settlement awards to
24 Class Members as well as the Class Representative Service Payment to Plaintiff, the LWDA's
25 PAGA payment to the LWDA, and Class Counsel's attorneys' fees and costs to Class Counsel.
26 *Id.*, § 6(D).

27 After disbursement, Class Members will have 180 days to cash their checks. *See*
28 Settlement, § 6(F). Funds remaining unclaimed after 180 days shall be deposited by the Settlement

1 Administrator with *cy pres* recipient San Ysidro Health. If any Settlement award check is returned
2 to the settlement administrator as undeliverable, the settlement administrator shall perform a “skip
3 trace” for the settlement class member to who the settlement award was mailed and shall re-mail
4 the settlement award to any new address obtained through skip trave. *Ibid*.

5 **IV. ARGUMENT**

6 **A. This Court Should Confirm its Conditional Certification of the Settlement Class**
7 **for Settlement Purposes Because it Meets All of the Requirements for Class**
8 **Certification Under Code of Civil Procedure § 382**

9 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
10 and its members are too numerous for joinder to be practical; (2) the representative and absent
11 class members share a community of interest, and questions of law and fact common to the class
12 predominate over questions unique to individual class members; (3) the representative’s claims
13 are typical of the classes’ claims; and (4) the representative will fairly and adequately represent
14 the class’s interests. *See Richmond v. Dart Industries, Inc.*, 29 Cal.3d 462, 470 (1981).

15 Here, this Court found that the Settlement Class meets all the requirements for class
16 certification for settlement purposes when it granted preliminary approval of the Settlement on
17 June 14, 2024. *See generally* Larsen Decl., Exh. A. No subsequent events have cast doubt on the
18 propriety of this determination, and in fact, the reaction of the Settlement Class has been
19 overwhelmingly positive, with not a single objection and no requests for exclusion. *See* Burns
20 Decl., ¶¶ 8-10. This Court should therefore confirm its conditional certification of the Settlement
21 Class.

22 **B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate,**
23 **and Reasonable Compromise of Disputed Wage and Hour Claims**

24 Rule of Court 3.769 conditions class settlements on court approval, which is generally
25 evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United Teachers Los*
26 *Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine “that the
27 settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d
28 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine “whether a proposed settlement

is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly in class actions. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). There is a presumption of fairness when a settlement is negotiated at arm’s length by counsel. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

The court approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held, at which class members have the opportunity to be heard with respect to the settlement. *See Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). Now that notice has been provided to the Settlement Class, Plaintiff respectfully requests that this Court finally approve the Settlement as fair, adequate, and reasonable.

1. *The Settlement was Reached at Arm’s Length, Through Experienced Counsel and an Experienced Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement in Light of the Claims Asserted and Risks of Continued Litigation*

To make a fairness determination, the Court should consider several factors, including: “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

2. *The Settlement is Fair, Adequate and Reasonable in Light of the Risks Faced by Plaintiff*

The Settlement resulted from extensive arm’s-length negotiations between qualified counsel, with the assistance of an experienced mediator, and is fair, adequate, and reasonable for all Settlement Class members. While Plaintiff steadfastly maintains her claims are meritorious, Plaintiff acknowledges her position included substantial risks and uncertainty, which justifies a downward departure from the maximum exposure each claim potentially carried. Bezsam raised

1 several defense as to the class representative nature of Plaintiff as her position was unique, thus,
2 creating substantive differences among the putative class members with respect to payments,
3 payment calculations, meal and rest-breaks.

4 As detailed in Plaintiff's Motion for Preliminary Approval, there was a significant risk of
5 non-certification and/or not prevailing on the merits with respect to each of Plaintiff's claims.
6 Larsen Decl., ¶¶ 13-18. For example, with respect to Plaintiff's claim that Bezsam allegedly
7 underpaid overtime and meal period premiums due to its failure to include shift differentials,
8 commissions, and other forms of non-excludable compensation in the "regular rate" of pay,
9 Bezsam raised several defenses including that the hourly rate differences in question were
10 discretionary and/or not tied to the quality or quantity of work, and therefore were excludable
11 from the regular rate. *Id.*, ¶ 13. Bezsam also maintained that employees received different types
12 of remuneration throughout the Class Period, thus creating substantive differences among the
13 putative class members with respect to the payments received as well as the expectations
14 regarding those payments, making class certification unlikely. *Id.*

15 As for Plaintiff's meal period claim, Bezsam asserted several defenses including that
16 members of the putative Class are subject to federal exemption by the Motor Carrier Safety Action of
17 1984 (FMCSA and its the hours of service of the U.S. Dept. of Transportation Code of Federal
18 Regulations (See 8 C.C.R., s. 11090(3)(L)); and that the putative class is exempt from the provisions
19 of Wage Order 9 pursuant to Title 13, Cal. Code of Regulations, subchapter 6.5, Sec. 1200 *et seq.*
20 Bezsam also contended that Bezsam always maintained compliant meal period policies, that
21 under *Brinker* it is only required to "provide" the opportunity to take meal periods, not "ensure"
22 they are taken. Larsen Decl., ¶ 14. Bezsam also asserted that employees were provided with the
23 opportunity to take all meal periods, that any late, short, or missed meal periods were the result
24 of employee choice, and that potential issues with class certification exist given differences in job
25 duties, supervisors, and other circumstances surrounding each shift worked by each individual
26 employee. *Id.*

27 As for Plaintiff's rest period claim, Bezsam asserted that members of the putative Class are
28 subject to federal exemption by the Motor Carrier Safety Action of 1984 (FMCSA and its the hours

1 of service of the U.S. Dept. of Transportation Code of Federal Regulations (See 8 C.C.R., s.
2 11090(3)(L))³. Further, Bezsam contended that the putative class is exempt from the provisions of
3 Wage Order 9 pursuant to Title 13, Cal. Code of Regulations, subchapter 6.5, Sec. 1200 *et seq.*
4 Furthermore, Bezsam contended that it has always maintained legally compliant rest period
5 policies, and that, in practice, it has always authorized and permitted all required rest periods to
6 non-exempt employees; that it informs employees of their right to rest periods; and that any failure
7 to take a rest period is the result of employee choice rather than any policy or practice of Bezsam.
8 Larsen Decl., ¶ 15. Bezsam also asserts that rest periods are not recorded and therefore present
9 substantial difficulties for class certification. *Id.*

10 As for Plaintiff's reimbursement claim, Bezsam presented several defenses including that
11 for safety reasons, employees were prohibited from using their personal cell phones for work, as
12 Bezsam provided all necessary tools for the job, that Bezsam had a mechanism in place for
13 reimbursement of reasonable work-related expenses, and that certification would not be
14 appropriate since individualized inquiries would be necessary to determine whether each
15 individual employee incurred business expenses, whether those expenses were in fact reimbursed,
16 and whether any unreimbursed expense was reasonable in the employee's individual
17 circumstances. *Id.*, ¶ 16.

18 As for Plaintiff's wage statement, waiting time penalties, and PAGA claims, Bezsam
19 argues that Plaintiff's claim fails for the same reasons her underlying claims for various Labor
20 Code violations fail, and further maintains that given its strong defenses and its good-faith
21 attempts to comply with the law, that the Court would substantially reduce PAGA penalties even
22 if the Court were to find in Plaintiff's favor on her underlying claims. *Id.*, ¶¶ 17-18.

23 These considerations not only bore heavily on the negotiations leading to the Settlement,
24 but they also confirm that the Settlement is a fair, adequate, and reasonable compromise in view
25 of the risks of further litigation. *Id.*, ¶ 19. Thus, while these risks are far from exhaustive, they
26 demonstrate that the Settlement is fair, adequate, and reasonable. *Id.*

27 ///

28 ///

1 **3. *The Settlement Fairly, Reasonably, and Adequately Compensates Class***
2 ***Members Because Each Participating Class Member Will Be Paid***
3 ***Based on the Extent of His or Her Injury***

4 Each individual Settlement Award will be calculated based on the proportionate number
5 of workweeks worked by each Class member during the Class Period, and payments from the
6 PAGA Amount will be based on the proportionate number of Pay Periods in which they worked
7 during the PAGA Period. *See* Settlement, § 6(B)-(C). This method of distribution compensates
8 Settlement Class members based on the estimated extent of their injuries, as those who worked
9 more workweeks would have been subject to more of the alleged wage and hour violations than
10 those who worked fewer workweeks and those who are eligible for a portion of PAGA Amount
11 would be entitled to additional penalties. Thus, the formula for compensating Settlement Class
12 members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could
13 be recovered.

14 **4. *The Absence of Any Objections and Only One Opt-Out Confirms that***
15 ***the Settlement is Fair, Adequate, and Reasonable***

16 Class members' response to a settlement is relevant in evaluating whether it merits final
17 approval. *Dunk, supra*, 48 Cal.App.4th at 1801. The absence of objections and only one requests
18 for exclusion supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v.*
19 *Southland Corp.*, 85 Cal.App.4th 1135, 1152-53 (2000) (finding 9 objections and 80 opt-outs
20 from a class of 5,454 showed a "particularly impressive" favorable response from class
21 members). Here, not a single Settlement Class member has objected to the Settlement, and
22 likewise there are no requests for exclusion from the Settlement, resulting in a 100% participation
23 rate. Burns Decl., ¶¶ 8-10. The extremely favorable response of the Settlement Class further
24 confirms that the Settlement is fair, adequate, and reasonable.

25 **C. The Requested Award of Attorneys' Fees is Reasonable**

26 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to
27 recover their attorneys' fees and costs for their wage claims. *See* Labor Code §§ 226(e), 1194,
28 2699(g), and 2802(c). A fee award is justified where the legal action has produced its benefits by
way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987);
Westside Community for Independent Living, Inc. v. Obledo, 33 Cal.3d 348, 352-53 (1983).

1 **1. Under the Common Fund Doctrine, it is Proper to Compensate Class**
2 **Counsel Based on a Percentage of the Recovery Obtained for the Class**

3 When a settlement results in a common fund for the benefit of a class, class counsel may
4 be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at
5 254 (recognizing the “percentage of recovery” method). The California Supreme Court
6 confirmed in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016), that “[t]he percentage
of fund method survives in California class action cases.” Specifically, the *Laffitte* Court held:

7 The recognized advantages of the percentage method—including relative
8 ease of calculation, alignment of incentives between counsel and the class,
9 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.”

10 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977)
11 (“when a number of persons are entitled in common to a specific fund, and an action brought by
12 a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,
13 such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Rawlings v.*
14 *Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
15 method for calculating attorneys’ fees more accurately reflects the results achieved for the
16 putative class than the lodestar method and “establishes reasonable expectations on the part of
17 plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which
18 avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d
19 Cir. 2005) (“The percentage-of-recovery method is generally favored in common fund cases
20 because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success
21 and penalizes it for failure.’”).

22 Here, Class Counsel’s fee request of \$155,000.00 (one-third of the Gross Settlement
23 Amount) is fair and reasonable based on a percentage of the recovery confirmed with a lodestar
24 cross-check. First, “regardless whether the percentage method or the lodestar method is used, fee
25 awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162
26 Cal.App.4th 43, 66, fn. 11 (2008). This is also consistent with Class Counsel’s experience in
27 similar wage and hour class action matters. *See* Larsen Decl., ¶¶ 22-24, & Exhibit C. Thus, the
28 percentage sought by Class Counsel here (the same percentage approved in *Laffitte*) is

1 reasonable.

2 **2. The Fees Requested are Reasonable**

3 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards
4 with tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s
5 lodestar (hours worked multiplied by hourly rate) and determines whether the “lodestar
6 multiplier” needed to bring the lodestar on par with the percentage of recovery is reasonable.
7 *Laffitte* at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.*,
8 at 506 (“[w]e hold further that trial courts have discretion to conduct a lodestar cross-check on a
9 percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-
10 check and use other means to evaluate the reasonableness of a requested percentage fee.”)

11 Under the lodestar method, the court computes the “lodestar” amount by multiplying the
12 number of hours reasonably expended by each attorney or legal staff member by their reasonable
13 hourly rates. *See, e.g., Serrano*, 20 Cal.3d at 48. The court then enhances the lodestar by a
14 “multiplier” to account for a range of factors, such as the novelty and difficulty of the case, its
15 contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24 Cal.4th
16 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is
17 no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to
18 increase or decrease a lodestar calculation”).

19 Under California law, lodestar multipliers can range from 2 to 3 or even higher. *See, e.g.,*
20 *Chavez, supra*, 162 Cal.App.4th at 49-50, 62 (approving multiplier of approximately 2.5); *City*
21 *of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34);
22 *Coalition for Los Angeles County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d
23 241, 251 (1977) (approving multiplier of ~2.04); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
24 1050-51 (9th Cir. 2002) (upholding multiplier of 3.65). In class actions such as this one, where
25 the value of the benefit conferred to the class “can be monetized with a reasonable degree of
26 certainty,” a court may “adjust the lodestar in comparison to a percentage of the common fund
27 to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the
28 legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557
(2009). In doing so, “the court determines, retrospectively, whether the litigation involved a

contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at 503-05.

Class Counsel have a lodestar of approximately \$151,520.00 without the use of any multiplier, compared to the \$155,000.00 fee request. Larsen Decl., ¶ 22. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below. The billing rates used are reasonable in view of the evidence submitted herewith. *Id.*, at ¶¶ 22-25; Exh. C (*Laffey Matrix*).

Name	Rate	Hours	Lodestar
Tuvia Korobkin (15th Year Attorney)	\$675	123.5	\$83,362.50
Neil M. Larsen (13th Year Attorney)	\$650	78.3	\$50,895.00
Eli J. Drummond (2nd Year Attorney)	\$375	10.1	\$3,787.50
Jennifer S. Rivera (1st Year Attorney)	\$350	15.8	\$5,530.00
Meghan E. McNally (1st Year Attorney)	\$350	13.5	\$4,725.00
Paralegals	\$200	16.1	\$3,220.00
Total Lodestar			\$151,520.000

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino*, 290 F.3d at 1048-51 (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys’ fees). Class Counsel negotiated a substantial recovery for the Settlement Class, and not a single Settlement Class member has objected to the Settlement or to Class Counsel’s requested fees. *See Burns Decl.*, ¶¶ 8-10.

Additionally, the average settlement payment in this case of approximately \$549.82 exceeds payments in similar wage and hour class action settlements. *See, e.g., Schiller v. David’s Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. 2012) (finding that average payment to class members of less than \$200 was a “good” result); *Williams v.*

1 *Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting
2 final approval of class action settlement where average recovery for each class member was
3 approximately \$108, based on \$239,363.14 distributed to 2,212 claimants). The fact that Class
4 Counsel achieved these results in the face of serious defense challenges, and an uncertain legal
5 landscape, confirms the strength of the results achieved.

6 As discussed above, this case presented significant risk as to both class certification and
7 merits considerations. Accordingly, it is fair and reasonable to account for these risks in
8 compensating Class Counsel. Class Counsel should also be compensated for the risks involved
9 in undertaking this litigation and expending considerable effort, all while working on a pure
10 contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all
11 the costs of litigation without receiving any compensation. Larsen Decl., ¶ 25. During this time,
12 Class Counsel have expended \$21,576.88 in costs and have devoted substantial time to this
13 litigation. *Id.*, ¶ 22 & Exh. B.

14 Class Counsel's efforts have included conducting pre-filing investigation, analyzing
15 Plaintiff's claims, conducting legal research, reviewing Bezsam's documents and policies,
16 conducting extensive formal and informal discovery, analyzing timekeeping and payroll records
17 with help of an expert to develop a comprehensive mediation brief and exposure analysis,
18 preparing for and attending mediation, negotiating and preparing the short-form Memorandum of
19 Understanding and the long-form Settlement Agreement, preparing the Motion for Preliminary
20 Approval, overseeing the Notice process and fielding inquiries from Settlement Class members,
21 drafting the instant Motion for Final Approval, and otherwise litigating the case. *See* Larsen Decl.,
22 ¶ 21. Given the considerable potential for adverse outcomes in this case, including, but not limited
23 to, losing on class certification and/or merits issues, the contingent risk borne by Class Counsel
24 was great. *Ibid.*

25 Class Counsel's previous experience in litigating wage and hour class actions also
26 supports the reasonableness of the fee request. Class Counsel are well-versed in wage and hour
27 class action litigation, with substantial experience litigating claims for unpaid wages, meal and
28 rest period violations, and related penalties, and have been certified as class counsel in numerous

1 other cases. *See Id.*, ¶¶ 3-5. Class Counsel’s experience in similar matters was integral in
2 evaluating the strengths and weaknesses of the case against Bezsam, and the reasonableness of
3 the Settlement. *See Ibid.* Practice in the narrow field of wage and hour litigation requires skill and
4 knowledge concerning the rapidly evolving substantive state and federal law, as well as the
5 procedural law of class action litigation. *Id.*, ¶¶ 23-25. Because it is reasonable to compensate
6 Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-third
7 of the Gross Settlement Amount is reasonable as the California Supreme Court held in *Laffitte*.

8 **D. The Requested Litigation Cost Amount Warrants Final Approval as Fair,**
9 **Adequate, and Reasonable**

10 Class Counsel requests \$21,576.88 in litigation costs. Larsen Decl., ¶ 20 & Exh. B. The
11 cost request is fair, adequate, and reasonable, as the costs were reasonably incurred, and the costs
12 Plaintiff seeks are routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19
13 (9th Cir. 1994) (counsel should recover “those out-of-pocket expenses that would normally be
14 charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3
15 (N.D. Cal. 2011) (“costs of reproducing pleadings, motions and exhibits are typically billed by
16 attorneys to their fee-paying clients” and are reimbursable); *Trustees of Const. Industry &*
17 *Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006)
18 (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F.
19 Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal
20 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).
21 Because the expense reimbursements requested by Class Counsel were reasonably incurred, and
22 no Class member has objected to them, this Court should grant the request for costs.

23 **E. This Court Should Approve the Requested Settlement Administration Costs**

24 Plaintiff also requests that this Court approve \$10,000.00 in settlement administration
25 costs to the Settlement Administrator, Phoenix. As detailed in the declaration of Yami Burns
26 submitted herewith, Phoenix performed duties in connection with this Settlement that were
27 integral in effectuating the Settlement and the Notice process. Among other things, Phoenix
28 calculated each Settlement Class member’s individual payment, updated addresses contained in

the class data supplied by Bezsam, translated and formatted Notices for mailing, mailed Notice Packets to all 422 Settlement Class members, kept the parties informed of any objections or requests for exclusion, and have otherwise administered the Settlement. *See* Burns Decl., ¶¶ 3-5. Phoenix’s requested costs are fair, reasonable, and adequate, and should be finally approved.

F. This Court Should Approve Plaintiff’s Requested Class Representative Service Payment

Courts routinely approve enhancement payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 (approving \$50,000 service payment).

Here, Plaintiff seeks a Class Representative Service Payment of \$7,500.00, and believes this request is reasonable given her efforts in this case and the risks she undertook on behalf of Class members. *See* Arce Decl. ¶¶ 4-6. Plaintiff gathered documents for use in the lawsuit, reviewed and analyzed documents related to the claims in this case and the policies produced by Bezsam, and discussed case strategy and Bezsam’s wage and hour practices and policies with Class Counsel on numerous occasions. *Id.*, ¶ 6.

Plaintiff also undertook the risk of being liable for Bezsam’s costs if this case were lost, as well as the reputational risk of being the named plaintiff in a wage and hour class action against an employer. *See, e.g., Deaver v. Compass Bank*, 2015 WL 8526982 at **14-15 (N.D. Cal. Dec. 11, 2015) (approving \$7,500 incentive payment in \$500,000 wage and hour settlement, finding the award “particularly appropriate in this wage and hour class action, where Plaintiff undertook a significant ‘reputational risk’ in bringing this action against his former employer”). *See Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$15,000 total award to named plaintiff in wage and hour class action settlement, including \$10,000 incentive award plus an additional \$5,000 for plaintiff’s release of claims). Moreover, after receiving notice of the proposed Service Award for Plaintiff, no Settlement Class member has objected to it. *See* Burns Decl., ¶ 8-10. Thus, the requested \$7,500.00 service payment to Plaintiff

1 is appropriate and justified as part of the Settlement and should be finally approved.

2 **V. CONCLUSION**

3 For the foregoing reasons, Plaintiff respectfully submits that this Court should grant
4 Plaintiff's motion in its entirety and adopt the [Proposed] Judgment and Order Granting Final
5 Approval of Class Action Settlement submitted herewith.

6 Respectfully submitted,

7 Dated: October 16, 2024

ABRAMSON LABOR GROUP

8
9 By: Neil Larsen
10 Neil M. Larsen
11 *Attorneys for Plaintiff*
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