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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

DANIELLA MARQUEZ, as an individual
on behalf of herself and on behalf of all
others similarly situated,

Plaintiff,

vs.

S & G DISCOUNT OUTLET, INC., a
California Corporation; and DOES 1-100,
inclusive,

Defendants.

Case No.: Case No.: 23CV005687

Assigned for All Purposes to:
Hon. Hon. Jill H. Talley
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**

[Filed concurrently with Notice of Motion and
Motion; Declarations of Nikki Trenner and Madely
Nava; [Proposed] Order]

Date: January 10, 2025
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Dept. 23

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Daniella Marquez seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 368
4 individuals including all current and former non -exempt employees who worked either directly
5 or via a staffing agency for Defendant S&G Discount Outlet, Inc. (“S&G” or “Defendant”) at
6 any location in California during the Class Period of July 28, 2019 to February 6, 2024. The
7 proposed \$370,000 total settlement provides about \$203,127 in cash payments to the Class,
8 with an average award of about \$552, plus additional amounts payable under PAGA. The
9 remaining balance will cover settlement administration costs, civil penalties to the state,
10 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
12 experienced and highly-regarded mediator. The Court conditionally certified the Class
13 and preliminarily approved the settlement on July 31, 2024. Since then, the Court-approved
14 notice form was mailed to the Class Members on September 12, 2024, and they reacted
15 very favorably to the settlement. As of the date of this motion, no class members opted out
16 of the settlement, and there are no objections.

17 Further, Class Counsel secured an excellent settlement with Defendant after
18 some two years of investigation, litigation, and settlement negotiation and
19 administration, all without any compensation for services rendered or costs expended.
20 The class notice duly informed the class members that Class Counsel would request
21 attorney’s fees not to exceed 33.33% of the Gross Settlement Amount, or \$123,333.00,
22 along with reimbursement of no more than \$20,000 for actual costs incurred litigating
23 this matter. As of the filing of this motion, *not one Class Member objected* to the
24 proposed fee award. Consistent with the Settlement and Notice, Plaintiff now
25 respectfully requests the Court award Class Counsel's fees in the amount of
26 \$123,333.00 and costs in the amount of \$8,952.32, as described in the Declaration of
27 Nikki Trenner (“Trenner Decl.”) filed herewith. The requested attorney’s fees are well
28 within the range of reasonableness, especially considering the complex and risky nature

1 of this litigation, the contingent risk assumed, and the nearly two year delay in payment
2 and, when subjected to a lodestar crosscheck, result in fee request that is less than the
3 unadorned lodestar.

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

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

8 S&G is a flooring retailer that operates numerous retail locations throughout California
9 including Rancho Cordova, Rocklin, Elk Grove, Dublin, Santa Clara, San Jose, and Cupertino.
10 Plaintiff was employed by S&G as a non-exempt customer service assistant from January 28,
11 2023 to June 30, 2023, at S&G's Rancho Cordova location. During her employment, Plaintiff
12 typically worked at least 8 hours per day, 5 days per week. [Trenner Decl., ¶ 2.]

13 Plaintiff alleges S&G violated California wage and hour law in several respects. First, she
14 alleges she and the class members worked off the clock by having to communicate with
15 supervisors while at home or away from the store, and while getting to/from the time clocks in
16 order to punch in. She further alleges Defendant failed to include non-discretionary, non-hourly
17 pay in the "regular rate" and thus underpaid for overtime and sick time. She next contends meal
18 and rest periods were not completely free from employer control because S&G placed restrictions
19 on how employees could use their lunch time and they were not allowed to leave the premises.
20 She further claims she had to use her personal cell phone for business purposes without
21 reimbursement. [Trenner Decl., ¶ 3.]

22 Based on these allegations, on July 28, 2023, Plaintiff commenced this action by filing a
23 class action complaint alleging causes of action against Defendant for (1) recovery of unpaid
24 minimum wages and liquidated damages; (2) recovery of unpaid overtime wages; (3) failure to
25 provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or
26 compensation in lieu thereof; (5) failure to provide accurate, itemized wage statements; (6) failure
27 to timely pay all wages due upon separation of employment; (7) failure to reimburse business
28 expenses; and (8) violations of the Unfair Competition Law. On September 21, 2023, after notice

1 to the LWDA and exhausting administrative remedies, Plaintiff filed a First Amended Complaint
2 adding an additional cause of action against Defendant under PAGA based on the same alleged
3 Labor Code violations. [Trenner Decl., ¶ 4.]

4 S&G has at all times denied Plaintiff's allegations and maintained its timekeeping and
5 payroll policies accurately track and pay for all hours worked by its employees at the correct rates
6 of pay. Defendant further argues it paid the class members appropriately for all hours worked,
7 maintains compliant meal and rest break policies, and provided class members with all required
8 meal and rest breaks on a fully compliant basis or compensated them appropriately for any missed
9 breaks. It also strongly contends the case cannot be maintained as any kind of class or
10 representative action, arguing for example that to the extent class members worked off the clock
11 or missed meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent and
12 infrequent and evidence of such alleged violations be purely anecdotal, and therefore
13 individualized issues predominate and trial on a representative basis would be unmanageable.
14 [Trenner Decl., ¶ 5.]

15 Once the matter was at issue, the Parties initiated discovery and later, after engaging in
16 meet and confer discussions regarding discovery, potential law and motion, and the merits of the
17 case, ultimately agreed to attempt mediation. They then engaged in significant informal discovery
18 to facilitate an exchange of information necessary to engage in a meaningful mediation. In August
19 2023, the Parties participated in global mediation of both cases with the Hon. Brian Walsh, (Ret.),
20 a respected wage and hour class action mediator and, after a full day of mediation reached the
21 proposed settlement. [Trenner Decl., ¶¶ 6-7.] This Court preliminarily approved the settlement
22 on July 31, 2024.

23 Class notices were mailed to class members on September 12, 2024, with a 45-day
24 window (to October 28, 2024) for class members to opt out of or object to the proposed
25 settlement. [Declaration of Madely Nava ("Nava Decl."), ¶¶ 7, 11-13.]

26 **III. THE PROPOSED SETTLEMENT TERMS**

27 Under the settlement, S&G will pay \$370,000 into a common fund, the Gross Settlement
28 Amount. Reasonable attorney's fees of up to \$123,333.00 (33.33% of the GSA), litigation costs

of up to \$20,000 (only \$8,952.32 is requested), an enhancement award to Plaintiff of up to \$5,000, settlement administration costs of \$9,587, and \$20,000 for civil penalties under PAGA (of which 75%, or \$15,000, will go to the Labor & Workforce Development Agency, and 25%, or \$5,000 will go to the Aggrieved Employees) all will be paid from the Gross Settlement Amount. The remainder of approximately \$203,127 will be allocated among the Participating Class Members based on their total weeks worked during the Class Period. No portion of the Gross Settlement Amount will revert to S&G. [Trenner Decl., ¶ 8.]

A. Certification of the Settlement Class

The Court conditionally certified a settlement class defined to include all current and former non -exempt employees who worked either directly or via a staffing agency for S&G at any location in California during the Class Period of July 28, 2019 to February 6, 2024. The Settlement Administrator ultimately mailed class notices to 368 individuals identified as members of the Class. [Nava Decl., ¶ 7.] Nothing has changed to require reconsideration of the Court’s certification of the Settlement Class.¹

B. The Benefit Conferred on the Settlement Class

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

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for S&G during the Class Period while employed in a non-

¹ The “Aggrieved Employees” all current and former non-exempt employees who worked either directly or via a staffing agency for Defendant at any location in California during the PAGA Period of June 28, 2022 to February 6, 2024. There are 179 Aggrieved Employees. [Nava Decl., ¶ 17.]

1 exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated
2 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid
3 premium wages for missed meal and rest breaks, and potential statutory penalties under applicable
4 law. These methods are intended to ensure each Class Member receives a portion of the available
5 settlement funds corresponding to the relative value of his or her potential claims. The proposed
6 allocation provides a reasonable way to compensate Class Members based on the amount of time
7 they worked for S&G and the number of instances they missed a meal break and/or rest break,
8 were not provided compensation in lieu of such missed breaks, or lost pay due to the alleged off
9 the clock work and regular rate issues. [Trenner Decl., ¶ 10.]

10 The average award to the Participating Class Members will be approximately \$552 with a
11 maximum award of over \$1,770, while the average PAGA award will be about \$27.93. [Nava
12 Decl., ¶¶ 16, 18.]

13 **C. Settlement Administration**

14 Apex Class Action, LLC, as the Court-approved Settlement Administrator, mailed the
15 Notice Packet to the Class members after making all reasonable effort to ascertain the best
16 mailing address, including running each address through the National Change of Address
17 database and "skip-tracing" any Notice Packets returned as undeliverable. [Nava Decl., ¶¶ 3-
18 10.] The Class Notice, previously approved by the Court, duly informed Class Members of
19 the settlement terms, including the estimated relief each Class Member will receive, the
20 amounts to be requested for attorney's fees and the class representative enhancement awards,
21 and the right to opt out of or object to the settlement. [Nava Decl., ¶ 7, Exh. A.] Apex mailed
22 368 Notice Packets on September 12, 2024. [Nava Decl., ¶ 7.] As of the filing of this motion,
23 three Notice Packets were deemed undeliverable, for a 99.2% success rate. [Nava Decl.,
24 ¶ 10.] The response window for opting out, objecting to the settlement, or submitting a
25 dispute, expired on October 28, 2024. [Nava Decl., ¶¶ 11-13.] As of the filing of this motion,
26 Apex has received zero requests for exclusion, zero objections to the settlement, and no
27 disputes have been submitted regarding the information used to calculate class member
28 settlement shares. [Nava Decl., ¶¶ 11-13.]

1 **D. Release of Claims**

2 All Participating Class Members will release S&G from all claims alleged in the operative
3 FAC, or that could have been brought based on the factual allegations in the FAC during the Class
4 Period. Plaintiff and the LWDA will release those PAGA claims alleged in the PAGA notice to
5 the extent alleged in the FAC. The Class and PAGA releases are limited to the claims that were
6 actually pleaded or could have been pleaded based on the alleged facts in the FAC, and PAGA
7 notice for the PAGA claims. Only Plaintiff will provide a full general release of all claims.
8 [Trenner Decl., ¶ 11.]

9 **E. Notice to the LWDA**

10 As noted, the Parties allocated \$20,000 to resolution of Plaintiff's claims under PAGA,
11 and Plaintiff submits that amount is fair, reasonable, and adequate, and consistent with PAGA's
12 underlying purposes. Under PAGA, \$15,000 of this amount will be paid to the LWDA as the
13 state's share of the civil penalties, and the remainder of \$5,000 will be distributed to the 179
14 Aggrieved Employees eligible to receive a PAGA payment. As required by Labor Code section
15 2699(l)(2), Plaintiff gave notice of the settlement and the approval hearing to the LWDA.
16 [Trenner Decl., ¶ 12; Exh. 1.]

17 **IV. ARGUMENT**

18 **A. Standards For Approval**

19 The law favors settlement, particularly in class actions where substantial resources
20 can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg &
21 A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of
22 Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v.
23 Safeco Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951)
24 37 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
25 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
26 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
27 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
28 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48

1 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
2 two-step process intended to determine whether, under the totality of circumstances, the
3 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
4 Cal.App.4th at 245.

5 On a motion for final approval, the trial court is charged with determining whether,
6 in light of the total circumstances of the action and the response of the class members to the
7 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
8 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
9 determination and may consider a number of relevant factors, including: the strength of
10 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
11 further litigation; the amount offered in settlement; the extent of discovery and stage of the
12 proceedings; the experience and opinion of counsel; and the reaction of class members to the
13 settlement. *Id.* In light of the strong judicial policy favoring the settlement of class actions,
14 courts generally apply a presumption of fairness to a proposed class action settlement when:
15 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
16 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
17 similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802;
18 Wershba, 91 Cal.App.4th at 245.

19 **B. The Proposed Settlement Merits Final Approval**

20 The proposed settlement of this action warrants final approval under the standards
21 summarized above. The settlement is fair, reasonable and adequate, and represents a
22 favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly
23 approved by the class members as there are no objections and no class member has requested
24 exclusion.

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

27 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
28 was reached following arm's-length negotiations presided over by the Hon. Brian Walsh,

(Ret.), a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Trenner Decl., ¶ 7.] Moreover, Plaintiff and her counsel were well-informed about the facts and the law, and counsel Zachary M. Crosner, Jamie K. Serb, and Nikki Trenner 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. [Trenner Decl., ¶¶ 29-33, 36.] 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 Members have requested exclusion out of 368 settlement class members. [Nava Decl., ¶¶ 11-12.] 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. (9th Cir. 1976) 541 F.2d 832, 837; 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).

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

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

Prior to mediation, the parties engaged in both formal and informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding

1 S&G's payroll practices, a representative sampling of pay stubs and time records for about 25%
2 of the class members, applicable compensation plans, meal and rest break policies, etc., and
3 information from Defendant regarding class size and breakdown, number of work weeks/pay
4 periods, average rates of pay, and other information used to formulate a damages model. Plaintiff
5 then had that information reviewed with the assistance of a consulting expert. Plaintiff's counsel
6 are confident they obtained sufficient information to understand the law and facts of this case and
7 make an informed decision regarding the proposed settlement and whether it is fair and
8 reasonable. [Trenner Decl., ¶¶ 6, 13.]

9 Using the data obtained from Defendant, Plaintiff ran various calculations and estimated
10 S&G's likely maximum exposure on the class claims at approximately \$7.673 million, including
11 about \$347,270 on the unpaid wage/off the clock claim, \$151,300 on the underpaid
12 overtime/regular rate claim, \$2,725,425 on the meal period violation claim, \$2,960,655 on the
13 rest break claim, \$131,045 on the unreimbursed expense claim, \$398,450 on the wage statement
14 claims, and \$958,930 on the waiting time penalty claims. [Trenner Decl., ¶ 14.] Plaintiff
15 substantially discounted these theoretical maximums, however, based on S&G's multiple
16 procedural and merits defenses.

17 First, on the unpaid wage claims, Plaintiff alleges she and the class members worked off
18 the clock for several reasons, including losing several minutes of time during the process of
19 clocking in for a shift, returning company cell phones to the office after clocking out, and having
20 to communicate with supervisors and co-workers while off duty and away from the store. As a
21 result, per Plaintiff, she and the class members lost as much as 1-2 hours of compensable time
22 each week due to this off the clock and uncompensated work. In response, Defendant argued its
23 timekeeping and payroll policies accurately tracked and paid for all employee time. It also argued
24 that its policies prohibited any "off the clock" work. Accordingly, per S&G, if any off the clock
25 work occurred it was intermittent and infrequent, against company policy, and done without the
26 employer's knowledge or consent. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d
27 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). For
28 these reasons, S&G contends class certification of this issue would be impossible because

1 innumerable individual inquires would be required to determine what “off the clock” occurred
2 and if it was compensable. [Trenner Decl., ¶ 15.]

3 For the unpaid overtime claim, Plaintiff contends S&G paid commissions to putative class
4 members but failed to incorporate these payments into the regular rate of pay when calculating
5 overtime, sick pay, and premium payments for noncompliant meal and rest periods. Alvarado v.
6 Dart Container Corp. (2018) 4 Cal.5th 542, 534, 550 (“Regular rate of pay, which can change
7 from pay period to pay period, includes adjustments to the straight time rate, reflecting, among
8 other things, shift differentials and the per-hour value of any non-hourly compensation the
9 employee has earned.”). S&G contended on the other hand that its payroll policies fully and
10 properly compensated employees at the correct rates of pay. [Trenner Decl., ¶ 16.]

11 On the meal and rest break claims, Plaintiff alleges S&G’s policies prohibited Class
12 Members from certain behaviors while on a break, such as napping, “malingering,” or leaving the
13 premises without authorization. As a result, Plaintiff argued S&G does not provide duty-free rest
14 periods to employees because it fails to relinquish control over how Plaintiff and the Class
15 Members utilize their meal and rest period time. Plaintiff also alleged she and other class
16 members were asked to work during their lunch breaks on occasion, and that S&G nevertheless
17 “auto-deducted” 30 minutes from their time regardless of whether they actually received a
18 complete and uninterrupted break. [Trenner Decl., ¶ 17.]

19 In response, S&G contended its meal and rest break policies are fully compliant with
20 California law, and that it provided employees with the opportunity to take all required breaks. It
21 further contended all breaks were completely free from employer control, and that its policies
22 regarding sleeping or leaving the premises applied only while employees were clocked in and on
23 duty and not to break times. S&G further argued it paid tens of thousands in meal period premiums
24 for documented meal violations and, accordingly, complied with obligations to provide meal and
25 rest periods. [Trenner Decl., ¶ 18.]

26 On the expense reimbursement claim, Plaintiff alleges that use of her personal cellular
27 phone was necessary and consequential to her employment duties for purposes of communicating
28 with supervisors and co-workers. Defendant did not reimburse employees for the cost associated

1 with the use of the personal cellular phones for Defendant's benefit. Cochran v. Schwan's Home
2 Serv. (2014) 228 Cal.App.4th 1137, 1144. In response, S&G argued it provided employees with
3 company phones for use while on duty, and there would be no need to use of personal phones at
4 any other time. Per S&G, to the extent employees used their own phones, it was purely for
5 personal convenience, was not necessary to their employment, and therefore was not
6 reimbursable. [Trenner Decl., ¶ 19.]

7 Plaintiff also alleges S&G's wage statements were inaccurate and that it failed to timely
8 pay all wages due on separation of employment. These derivative claims are based on the unpaid
9 wage claims and will rise or fall along with those primary claims, in addition to being subject to
10 "good faith" and other defenses available to Defendant. E.g., Amaral v. Cintas Corp. No. 2 (2008)
11 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor
12 Code § 203 even though the class prevailed on the merits on the underlying claim for failing to
13 pay living wages). Defendant argued further that the wage statements accurately contained all
14 required information, and that acted in good faith all times with respect to payment of wages.
15 Accordingly, Plaintiff discounted these claims significantly in light of these multiple potential
16 defenses. [Trenner Decl., ¶ 20.]

17 As far as potential PAGA liability, the alleged aggrieved employees theoretically are
18 entitled to penalties totaling about \$2.2 million should Plaintiff prevail on all claims, establish
19 violations of the multiple Labor Code sections at issue, and secure the maximum penalty on all
20 claims as to all pay periods at issue. [Trenner Decl., ¶ 21.] As with the class claims, Plaintiff
21 discounted the potential PAGA penalties based on Defendant's various defenses on the merits
22 and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award
23 penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th
24 504 (trial court awarded penalties of \$5 per pay period after a Nava trial, which decision was
25 upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S.
26 Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated
27 \$20,000 to PAGA penalties.
28

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

13 Thus, Defendant raised various and multi-layered defenses to each of Plaintiff's claims,
14 anyone of which, if successful, could have decimated Plaintiff's case. And Defendant vowed to
15 raise all these defenses at trial. The settlement obviates the significant risk that this Court may
16 find any kind of class or representative resolution unachievable or deny certification of all or
17 some of Plaintiff's claims. Furthermore, even if Plaintiff obtained certification of all or some of
18 the claims, continued litigation would be lengthy and expensive as the parties pursued merits
19 discovery, a probable motion to decertify, as well as trial and possible appeals, and would
20 substantially delay any recovery by the class with no assurance of recovering significantly more
21 than the proposed settlement. While Plaintiff is confident in the merits of these claims,
22 legitimate controversies exist regarding each one of them. Likewise proving the amount of
23 wages and penalties due each Class Member would be an expensive, time-consuming, and
24 uncertain proposition. [Trenner Decl., ¶¶ 22-24.]

25 Although Plaintiff and counsel believe they could have prevailed, there was no such
26 guarantee. When the risks of certifying the class, maintaining certification through trial,
27 prevailing at trial on the merits on all claims, securing 100% of the theoretical damages and civil
28 penalties, and prevailing on any post-judgment appeals all are factored into the equation, the

1 settlement value is reasonable and supported. Plaintiff discounted the value of the class claims
2 consistent with the risks discussed above, and carefully weighed the likelihood of the class
3 receiving substantially greater benefit if the litigation continued. Plaintiff concluded – in light
4 of these very real and substantial risks – settlement on the proposed terms and without
5 prolonged and costly litigation was in the best interests of the class, as the overall \$370,000
6 recovery represents a significant percentage of Defendant’s potential exposure. Given these
7 risks, a total recovery for the class of \$370,000, which will result in average award of some
8 \$552 per class member, is a significant result well within the range of reasonableness
9 considering all potential outcomes, and it will provide direct monetary awards to all Class
10 Members in short order. [Trenner Decl., ¶ 24.]

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

www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

IV. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to Apex from the GSA for its services as the Settlement Administrator. As set forth in the Declaration of Madely Nava, Apex has performed and will continue to perform its required duties through final distribution of the settlement funds, and incurred \$9,587.00 in fees and expenses. [Nava Decl., ¶ 19.] Accordingly, Plaintiff respectfully requests the Court approve payment of \$9,587 to Apex from the GSA. [Trenner Decl., ¶ 25.]

V. PLAINTIFF’S ENHANCEMENT

Pursuant to the terms of the settlement, Plaintiff seeks modest incentive award of \$5,000 for her service in bringing these claims on behalf of the Class. This request is reasonable given the risks she undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members (plus the aforementioned true up payments), while shouldering the risk of being liable for Defendant’s litigation costs. Plaintiff also exposed herself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing themselves at risk of discrimination by future prospective employers. As set forth in more detail in her declaration submitted at preliminary approval, among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. [Declaration of Daniella Marquez, ¶¶ 2-9; Trenner Decl., ¶ 26.] Accordingly, the requested enhancement payment to Plaintiff is appropriate and justified as part of the settlement. 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).

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

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

4 This Court has discretion over the amount of attorneys' fees awarded and court
5 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
6 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000)
7 82 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
8 marketplace for cases involving significant contingent risk, such as this one. Deposit
9 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446
10 U.S. 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that
11 informed private bargaining, if it were truly possible, might have reached" in determining a
12 reasonable fee, and a fee award should approximate a "range of fees freely negotiated in
13 comparable litigation"). Here, Class Counsel's request for attorney's fees and costs is
14 reasonable and justified by the work performed, the benefits obtained, and the contingent
15 risk assumed. As addressed in detail above, at the time the parties reached the tentative
16 settlement success for Plaintiff and the putative class was far from certain. Plaintiff faced a
17 real risk that some or all the claims would not be certified for class treatment, as S&G had
18 strong arguments that its compensation policies were legal and properly compensated the
19 class members. Even if Plaintiff certified some or all of the claims and ultimately prevailed
20 on the merits, it undoubtedly would have taken several years to realize any recovery while
21 they pursued class certification, trial, and an almost certain appeal. [Trenner Decl., ¶¶ 15-
22 21.]

23 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief she set out to
24 obtain, and the settlement provides substantial cash payments to Class Members, with an
25 average award of about \$552, and with a maximum award of over \$1,770. Importantly as
26 well, the Class Members have been overwhelmingly supportive of the Settlement – as of
27 the filing of this motion there are no objections to the settlement and zero individuals have
28 opted out. [Nava Decl., ¶¶ 11-12, 16.]

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

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

11 As part of the Settlement, Defendant agreed not to object to an award of no more
12 than 33.33% of the GSA for attorney's fees, or \$123,333.00, and up to \$20,000 in
13 reimbursement for litigation costs and expenses (only \$8,952.32 is requested). Such a fee
14 is commensurate with what the market would provide for similar services and the Court
15 therefore can most certainly enforce the agreement. As California's Court of Appeal has
16 instructed:

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

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

23 Here, the parties did not negotiate the inclusion of attorney's fees until after
24 extensive arms-length bargaining regarding relief to the Class was completed. [Trenner
25 Decl., ¶ 27.] The requested fee and cost award was a product of these arms-length
26 negotiations and fairly reflects the marketplace value of the services rendered by Class
27 Counsel in this case. As a result, the fee agreed to by the parties should be approved.

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

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

10 The recognized advantages of the percentage method-including relative ease of
11 calculation, alignment of incentives between counsel and the class, a better
12 approximation of market conditions in a contingency case, and the encouragement it
13 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.

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

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

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

1 their individual claims in relation to the enormous time and cost associated with class action
2 litigation.

3 Here, Class Counsel seek a fee award for their successful prosecution and resolution
4 of this action of no more than 33.33% of the total amount recovered by the Class via the
5 lawsuit, or \$123,333.00. The percentage requested is justified for the reasons set forth
6 further below, and comports with fee awards calculated on a percentage-of-the-benefit
7 basis. Indeed, review of class action settlements shows that courts have historically awarded
8 fees in the range of 20 to 50 percent, depending upon the circumstances of the case. In re
9 Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding
10 that percentage fees in common fund cases range from 20 to 50 percent); Newberg,
11 Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the
12 upper limit on a reasonable fee award from a common fund in order to assure that the fees
13 do not consume a disproportionate part of the recovery obtained for the class, although
14 somewhat larger percentages are not unprecedented.").

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

16 To ensure the fairness of an attorney's fee award, courts frequently conduct a
17 lodestar cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism
18 for bringing an objective measure of the work performed into the calculation of a
19 reasonable attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 157.4 hours
20 of time on this matter, resulting in a modest and very reasonable lodestar of \$114,890.

21 As is fully detailed in the Trenner Declaration, Class Counsel's efforts included: (1)
22 extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including
23 legal research, research into similar claims and claims against other employers in the same
24 industry, and attempts to locate and contact other S&G employees; (2) drafting a PAGA notice
25 letter; (3) drafting the initial complaint and related documents; (4) case management, including
26 communications with defense counsel, meeting and conferring/preparing case management
27 statements, etc.; (5) drafting a first amended complaint; (6) propounding initial written
28 discovery, (7) lengthy discussions with defense counsel regarding settlement/mediation and

1 informal discovery needed for meaningful settlement discussions; (8) engaging in substantial
2 informal discovery, including propounding informal discovery “requests” and reviewing
3 documents and other information produced; (9) drafting a mediation brief and accompanying
4 damages model after review and analysis of Defendant’s informal discovery production; (10)
5 attending an all-day mediation; (11) negotiating and drafting the settlement agreement and
6 related documents; (12) drafting an amended complaint to effectuate the settlement; (13)
7 drafting the motion for preliminary approval, and attending the hearing; (14) administration of
8 the settlement, including communications with the Settlement Administrator and settlement
9 class members; (15) drafting the motion for final approval and motion for attorney’s fees, and
10 attending the final approval hearing; and (16) extensive communications with the Plaintiff
11 regarding case status, case investigation and document review, mediation, and settlement terms.
12 Additionally, Class Counsel will incur additional time following final approval to, inter alia,
13 respond to class member inquiries, work with the Settlement Administrator on the distribution
14 of settlement funds, and on the compliance hearing. [Trenner Decl., ¶ 28, Exh. 2.]

15 In pursuing this matter, Class Counsel incurred total attorney’s fees of \$114,890,
16 based on 157.4 attorney hours. The lodestar is based on an eminently reasonable number of
17 hours worked to litigate this matter to a successful conclusion, and the requested attorney hourly
18 rates are reasonable and comport with hourly rates charged by other attorneys with similar
19 experience in this practice area in California. [Trenner Decl., ¶¶ 29-41.] On a lodestar basis,
20 the fee request of \$123,333.00 results in a very reasonable 1.07 modifier over the base
21 lodestar, which is entirely in line with California precedent. Indeed, California courts
22 routinely approve multipliers in the in the 2-4 range to compensate for the time and risk of
23 class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming
24 attorneys' fee award including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at
25 255 ("Multipliers can range from 2 to 4 or even higher."); City of Oakland Oakland Raiders
26 (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).) Class Counsel submits that
27 the requested 1.41 multiplier effectively operates to show that the percentage fee request is
28 reasonable considering the challenges presented in this contingency fee matter, and

1 appropriately compensates Class Counsel for the contingent risk assumed and delay in
2 payment during the approximately two plus years counsel have been representing Plaintiff.
3 Thus, the multiplier results in a fee constituting a fair return on the contingency.

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

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

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

21 **1. The Results Achieved.**

22 Class Counsel obtained an excellent result in this case for the Class Members. The
23 Settlement provides real monetary benefits to the Class Members, and the Settlement is
24 particularly advantageous to the Class Member because the proceeds will be distributed
25 shortly as opposed to waiting additional years for a similar, or possibly, less favorable
26 result. Considering many individual claims would be very modest and would not be cost-
27 effective to pursue successfully, the Settlement provided them with fair compensation for
28 their claims. Moreover, the absence of any objection to either the Settlement or the

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

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

10 At the time of filing the complaint, Class Counsel recognized that they would have
11 to expend a substantial amount of time and advance significant costs to prosecute a
12 statewide class action suit with no guarantee of compensation or reimbursement, in the
13 hope of prevailing against a sophisticated company represented by first-rate attorneys.
14 Despite their belief in the validity of Plaintiff's claims, they also knew they faced
15 substantial risks of class certification and the ability to prove class-wide and individual
16 damages. In light of the highly uncertain nature of this suit, Class Counsel also bore the risk
17 that S&G would dig in and attempt to bury their small firms in work. Given the small size
18 of Class Counsel's firm, not receiving any compensation for several years while
19 simultaneously advancing litigation costs posed considerable risk and difficulty. [Trenner
20 Decl., ¶¶ 42-43.]

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

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

1 navigating these hurdles, Class Counsel displayed appropriate skill while pursuing a
2 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 palpable chance Plaintiff's counsel would receive nothing for any
27 number of reasons. [Trenner Decl., ¶¶ 42-43.] Accordingly, the contingent nature of the fee
28 and the 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, as cross-checked against the lodestar method in light of
4 the contingent risk assumed, the delay in payment, the result achieved, and the overall
5 quality of the representation.

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

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

17 As explained in the Trenner Declaration, Class Counsel incurred a total of
18 \$8,952.32 in expenses incurred in connection with this litigation. These expenses
19 include the amounts paid for court filing fees, Case Anywhere charges, service of
20 process, expert fees, postage, and mediation fees, all of which are costs normally billed
21 to and paid by the client. These costs were reasonably incurred in the prosecution of
22 this matter and it is respectfully requested that the Court authorized they be reimbursed
23 in full. [Trenner Decl., ¶¶ 44-45.]

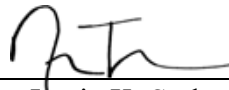
24 **VI. CONCLUSION**

25 For all the foregoing reasons, Plaintiff Daniella Marquez respectfully requests that the
26 Court grant this motion and grant final approval of the proposed class action settlement and
27 approve the payment of PAGA penalties to the State. Plaintiff further requests the Court
28 approve payment of the Settlement Administrator's fees and expenses, approve the requested

1 class representative enhancement, approve the award of attorney's fees and costs as requested,
2 and enter judgment in this action. Finally, Plaintiff requests the Court set a hearing regarding
3 settlement compliance for January 16, 2026, or a later date convenient for the Court.
4

5 Dated: December 16, 2024

CROSNER LEGAL, P.C.

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7 By: 
8 Jamie K. Serb
9 Nikki Trenner
10 Zachary M. Crosner
11 Attorneys for Plaintiff Daniella Marquez
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