

1 JAMIE SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
2 SEPIDEH ARDESTANI, ESQ. (SBN 274259)
sepideh@crosnerlegal.com
3 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
4 **CROSNER LEGAL, PC**
5 9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
6 Tel: (866) 276-7637
Fax: (310) 510-6429

7 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
8 Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
9 Aparajit Bhowmik (State Bar #248066)
Nicholas J. De Blouw (State Bar #280922)
10 2255 Calle Clara
La Jolla, CA 92037
11 Telephone: (858)551-1223
Facsimile: (858) 551-1232
12 Website: www.bamlawca.com

13 Attorneys for Plaintiffs
14

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SAN BERNARDINO**
17

18 LOUIS NORIEGA and THERESA MOORE,
19 individuals, on behalf of themselves and on
behalf of all persons similarly situated,

20
21 Plaintiffs,

22 vs.

23 QVC, INC., a Corporation; and DOES 1
24 through 50, inclusive,

Case No.: CIVSB2319032

Assigned for all Purposes to:
Hon. Jessica Morgan
Dept. S-26

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

Date: May 28, 2025
Time: 8:30 a.m.
Dept.: S-26

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

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1 **I. INTRODUCTION**

2 Plaintiffs and Class Representatives Louis Noriega and Theresa Moore seek final approval
3 of a non-reversionary class action settlement resolving wage and hour claims on behalf of 1,929
4 individuals employed by Defendant QVC, Inc. (“QVC” or “Defendant”) as non-exempt
5 employees in California during the period of December 24, 2021 to August 22, 2024. The
6 proposed \$1,500,000 total settlement provides about \$829,000 in cash payments to the Class, with
7 an average award of about \$430, plus additional amounts payable under PAGA. The remaining
8 balance will cover modest service awards to Plaintiffs, settlement administration costs, civil
9 penalties to the state, and reasonable attorney’s fees and costs. The parties and their counsel
10 finalized the settlement after extensive and difficult arms-length negotiations overseen by an
11 experienced and highly-regarded mediator. The Court conditionally certified the Class and
12 preliminarily approved the settlement on December 17, 2024. Since then, the Court-approved
13 notice form was mailed to the Class Members on March 6, 2025, and they have reacted very
14 favorably to the settlement. As of the filing of this motion, there are no objections and only one
15 Class Member has requested exclusion.

16 Class Counsel secured an excellent settlement with Defendant after extensive
17 investigation, litigation, and settlement negotiation and administration, all without any
18 compensation for services rendered or costs expended. The class notice duly informed the
19 class members that Class Counsel would request attorney’s fees not to exceed one-third
20 of the Gross Settlement Amount, or \$500,000, along with reimbursement of no more than
21 \$33,000 for actual costs incurred litigating this matter. As of the filing of this motion, *not*
22 *one Class Member objected* to the proposed fee award. Consistent with the Settlement
23 and notice, Plaintiff now respectfully requests the Court award Class Counsel's fees in the
24 amount of \$500,000 and costs in the amount of \$30,043.56, as described in the
25 Declaration of Sepideh Ardestani (“Ardestani Decl.”) and Kyle Nordrehaug
26 (“Nordrehaug Decl.”) filed herewith. The requested attorney’s fees are well within the
27 range of reasonableness, especially considering the complex and risky nature of this
28 litigation, the contingent risk assumed, the nearly two-plus year delay in payment and,

1 when subjected to a lodestar crosscheck, reflect an award on the base lodestar with a
2 reasonable 1.55 upward modifier – entirely in line with California precedent.

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

6 **II. BACKGROUND**

7 Defendant QVC is a retail distribution company that sells products from home and fashion
8 to beauty, electronics and jewelry. Defendant claims to reach more than 200 million homes
9 worldwide via its 12 broadcast networks and reaches millions more via multiple streaming
10 services, websites, mobile apps and social pages. QVC maintains a warehousing and distribution
11 center in Ontario, California. Plaintiff Noriega worked for Defendant as a Fulfillment Center
12 Team Member in Ontario from September 15, 2022 to December 14, 2022. Plaintiff Moore
13 worked in the Ontario facility as a Fulfillment Center Team Member from October 2021 to May
14 2023. [Ardestani Decl., ¶ 2.]

15 Plaintiffs assert multiple wage and hour claims against Defendant. First, Plaintiffs contend
16 they and the class members had to work “off the clock” because (a) they had to wait in long lines
17 to clock in/out for the shifts and their meal breaks, all while subject to employer control and (b)
18 depending on where they were working in the enormous warehouse, employees could need several
19 minutes to get to/from their work station to the break area which time was counted against their
20 meal break time. Additionally, at the end of a shift class members were not allowed to clock out at
21 the lobby of the building but instead had to clock out time clocks located deep in the warehouse
22 and then spend several minutes walking across the warehouse floor and exit the building. If an
23 employee used the lobby time clocks they would written up and disciplined. [Ardestani Decl., ¶ 3.]

24 Plaintiffs also contend they did not receive all required meal and rest breaks, or did not
25 receive them on a compliant basis, and never received an extra hour of premium pay in lieu of a
26 missed or non-compliant break. For the reasons addressed above, Plaintiffs allege QVC’s time
27 keeping policies caused these break violations as class members lost break time waiting in the
28 time clock line or traversing the warehouse to the break area and accordingly did not receive fully-

1 compliant meal and rest breaks. Finally, Plaintiffs allege class members had to use their personal
2 cell phones for work purposes such as communicating with each other and with supervisors.

3 [Ardestani Decl., ¶ 4.]

4 Based on these allegations, on August 9, 2023, after notice to QVC and the LWDA and
5 exhausting administrative remedies, Plaintiff Noriega filed a PAGA-only representative complaint
6 in this Court seeking civil penalties against Defendant for several alleged violations of the Labor
7 Code and IWC Wage Orders. A few weeks later, after likewise exhausting administrative
8 remedies, on November 3, 2023, Plaintiff Moore also filed a PAGA-only complaint in this Court
9 alleging substantially similar Labor Code violations by Defendant. Plaintiffs asserted their PAGA
10 claims on behalf of individuals who worked for Defendant as non-exempt employees in California
11 during the relevant time frame. [Ardestani Decl., ¶ 5.]

12 QVC has at all times denied Plaintiffs' collective allegations and maintained its meal break
13 and payroll policies and procedures comply with California law, that it provided the class
14 members with required meal and rest breaks, and that it paid Plaintiffs and the class members all
15 wages due and for all hours worked. Additionally, QVC strongly contends the case cannot be
16 maintained as any kind of class or representative action, arguing that to the extent class members
17 missed breaks, that such breaks were non-compliant, or that employees worked "off the clock," it
18 was against company policy, and intermittent or infrequent and evidence of such violations would
19 be purely anecdotal. Thus, per QVC individual issues predominate and trial would be
20 unmanageable. [Ardestani Decl., ¶ 6.]

21 After Plaintiffs filed their complaints, the Parties met and conferred on discovery, potential
22 law and motion, and other case management issues, and ultimately agreed to attempt mediation.
23 The Parties also engaged in extensive informal discovery to facilitate an exchange of information
24 necessary to engage in a meaningful mediation. The Parties then engaged David Rotman, Esq., a
25 highly respected mediator with extensive wage and hour class action experience and, in May 2024,
26 participated in a full day mediation with Mr. Rotman. By the end of the day, the Parties were able
27 to reach agreement on all major issues. [Ardestani Decl., ¶¶ 7-8.] The Court granted preliminary
28 approval to the settlement on December 17, 2024.

1 Class Notices were mailed to class members on March 6, 2025, with a 60-day window
2 (to May 5, 2025) for class members to opt out or object to the proposed settlement.

3 [Declaration of Markus Balthuis (“Balthuis Decl.”), ¶¶ 8, 12-13.]

4 **III. PROPOSED SETTLEMENT TERMS**

5 Under the settlement, QVC will pay \$1,500,000.00 into a common fund, the Gross
6 Settlement Amount or GSA. Attorney’s fees of up to one-third of the GSA (\$500,000), litigation
7 costs of up to \$33,000 (only \$30,043.56 is requested), service awards of \$10,000 each for the
8 plaintiffs (*i.e.*, \$20,000 total), settlement administration costs of \$18,000, and \$100,000 for alleged
9 PAGA civil penalties,¹ all will be paid from the Gross Settlement Amount. The remainder of
10 approximately \$829,000 will be allocated among the Participating Class Members based on total
11 weeks worked during the Class Period. No portion of the GSA will revert to QVC. [Ardestani
12 Decl., ¶ 9.]

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

14 The Court conditionally certified a settlement class including all c individuals employed by
15 Defendant QVC, Inc. as non-exempt employees in California during the period of December 24,
16 2021 to August 22, 2024. The Settlement Administrator ultimately mailed class notices to 1,929
17 individuals identified as members of the class. [Balthuis Decl., ¶ 8.] Nothing has changed to warrant
18 reconsideration of the Court’s certification of the class for settlement purposes.

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

20 As noted, the settlement obligates QVC to pay \$1,500,000 to resolve the Settlement Class’
21 claims, inclusive of attorney’s fees and costs. Approximately \$829,000 from the GSA will be
22 distributed to the Participating Class Members. This is a cash settlement that does not require
23 Participating Class Members to submit a claim form to receive their settlement share.
24 Participating Class Members will receive their settlement checks automatically via First Class
25 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
26 eighty percent will be allocated to expense reimbursement, penalties and interest. QVC will pay
27

28 ¹ Consistent with PAGA and the Settlement Agreement, \$75,000 of this amount will go to the LWDA for the State’s
share of civil penalties, and the remaining \$25,000 will be distributed to the Aggrieved Employees.

1 any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject
2 to the Court's approval, any amounts not claimed (because a class member does not cash his or her
3 settlement check), plus interest, will be forwarded to the California State Controller's Unclaimed
4 Property Fund. [Ardestani Decl., ¶ 10.]

5 Each Participating Class Member will receive a share of the Net Settlement Amount based
6 on his or her total weeks worked for QVC in California during the Class Period while employed in
7 a non-exempt position. Thus, each Class Member's Individual Settlement Share will be calculated
8 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium
9 wages for missed meal breaks, and potential statutory penalties under applicable law. These
10 methods are intended to ensure each Class Member receives a portion of the available settlement
11 funds corresponding to the relative value of his or her potential claims. The proposed allocation
12 provides a reasonable way to compensate Class Members based on the amount of time they
13 worked for QVC and the number of instances they missed a meal break, were not provided
14 compensation in lieu of such missed breaks, or lost wages due to the alleged off the clock work,
15 etc. [Ardestani Decl., ¶ 11.]

16 The average class award will be approximately \$430, and the awards will range from
17 approximately \$7.50 to \$1,050. The average PAGA award will be about \$13.92, and PAGA awards
18 will range from around \$0.47 to \$ 30.33. [Balthuis Decl., ¶ 11.]

19 **C. Settlement Administration**

20 Simpluris, Inc., as the Court-approved Settlement Administrator, mailed the Notice
21 Packet to the Class members after making all reasonable effort to ascertain the best mailing
22 address, including running each address through the National Change of Address database
23 and "skip-tracing" any Notice Packets returned as undeliverable. [Balthuis Decl., ¶¶ 3-9.]
24 The Class Notice, previously approved by the Court, duly informed Class Members of the
25 settlement terms, including the estimated relief each Class Member will receive, the amounts
26 to be requested for attorney's fees and the class representative enhancement awards, and the
27 right to opt out of or object to the settlement. [Balthuis Decl., ¶ 8, Exh. A.] Simpluris mailed
28 1,929 Notice Packets on March 6, 2025. [Balthuis Decl., 8.] Ultimately, 20 Notice Packets

1 were deemed undeliverable, representing a 98.7% success rate. [Balthuis Decl., ¶ 9.] The 60-
2 day response window for objecting to the settlement expired on May 5, 2025. [Balthuis Decl.,
3 ¶¶ 12-13.] As of the filing of this motion, Simpluris has received one request for exclusion
4 (for a 99.9% participation rate), and zero objections to the settlement. Simpluris has not
5 received any disputes regarding the information used to calculate class member settlement
6 shares. [Balthuis Decl., ¶¶ 12-14.] Simpluris will submit a supplemental declaration to update
7 the Court on the Class response prior to the hearing on this motion.

8 **D. Release of Claims**

9 All Participating Class Members will be deemed to release defendant QVC from all claims
10 alleged in the operative complaint, or that could have been brought based on the allegations in the
11 operative complaint, including PAGA claims, during the Class and PAGA Periods. The release is
12 limited to the claims that were actually pleaded or could have been pleaded based on the alleged
13 facts in the operative complaint. [Ardestani Decl., ¶ 12.]

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

15 As noted, the Parties allocated \$100,000 from the GSA to resolution of Plaintiffs' claims
16 under PAGA, and Plaintiffs submit that amount is fair, reasonable and adequate, and consistent with
17 PAGA's underlying purposes. Per Labor Code section 2699(1)(2), Plaintiffs gave notice of the
18 settlement and the approval hearing to the LWDA via its online portal. [Ardestani Decl., ¶ 13;
19 Exh. 1.]

20 **IV. ARGUMENT**

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

22 The law favors settlement, particularly in class actions where substantial resources can
23 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
24 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
25 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
26 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
27 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
28 compromised, the settlement of a class action requires court approval. Cal. Rule of Court

1 3.769; Dunk v. McCoy Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
2 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
3 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
4 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
5 two-step process intended to determine whether, under the totality of circumstances, the
6 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
7 Cal.App.4th at 245.

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

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

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

28 /////

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

2 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
3 was reached following arm's-length negotiations presided over by David Rotman, Esq., a highly
4 respected and well-known mediator with extensive experience mediating wage and hour class
5 actions. [Ardestani Decl., ¶ 8.] Moreover, Plaintiffs and their counsel were well-informed about
6 the facts and the law, and counsel Zachary Crosner, Sepideh Ardestani, and Jamie Serb, and
7 Crosner Legal, and Kyle Nordrehaug, have years of litigation experience, including litigating wage
8 and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of
9 pursuing further litigation or settling the matter. [Ardestani Decl., ¶¶ 31-39; Nordehaug Decl., ¶¶ 3-
10 5.] Defendants likewise were represented by highly-qualified and experienced defense counsel.
11 Both sides advocated vigorously for their clients, and nothing was "left on the table."

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

13 The settlement was well-received by the class. As of the filing of this motion, no
14 objections have been filed, and only one Class Member requested exclusion out of 1,929 settlement
15 class members. [Balthuis Decl., ¶¶ 12-13.] As many courts recognize, class member reaction to the
16 settlement is one of the most important factors to consider in determining if final approval should
17 be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also
18 In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-
19 settled that the reaction of the class to the settlement is perhaps the most significant factor to be
20 weighed in considering its adequacy") (internal quotation marks omitted).

21 **C. The Proposed Settlement Meets the Dunk and Kullar Factors and is within the**
22 **Range of Reasonableness, And Final Approval Should Be Granted**

23 Prior to settlement, the parties engaged in extensive informal discovery to facilitate
24 settlement discussions. As a result, Plaintiffs reviewed documents and information regarding QVC's
25 payroll practices, pay stubs and time records for a sampling of class members, meal and rest break
26 policies, etc., and information from Defendant regarding class size and breakdown, work weeks,
27 rates of pay, and other information used to formulate a damages model. Plaintiffs then had that
28 information reviewed with the assistance of consulting experts at Berger Consulting Group to help

1 evaluate meal and rest break violations rates, amount of off the clock work, and formulate a damages
2 model. Plaintiffs' counsel are confident they obtained sufficient information to enable them to
3 understand the law and facts of this case and make an informed decision regarding the proposed
4 settlement and whether it is in the best interests of the class. [Ardestani Decl., ¶¶ 7, 14.]

5 Using that data, Plaintiffs ran various calculations and estimated QVC's likely maximum
6 exposure on the class claims at approximately \$9,439,132, which consists of \$140,578 for unpaid
7 wages due to the allege miscalculation of the regular rate, \$858,847 on the unpaid wage/off the
8 clock claims, \$15,103 on the meal break claims (after deduction of meal period premiums already
9 paid), \$86,726 on the rest break claims, and \$143,030 on the expense reimbursement claims. In
10 addition, as to derivative statutory penalties, Plaintiffs calculated the maximum value of the wage
11 statement claims to be \$4,725,650 and \$3,469,198 for the waiting time penalty claims. [Ardestani
12 Decl., ¶ 15.] Plaintiffs' counsel substantially discounted the value of these claims, however, in
13 light of the multiple and considerable risks posed by proceeding with the litigation.

14 On the unpaid wage claims, Plaintiffs argued QVC's policies resulting in substantial "off
15 the clock" work that went uncompensated by Defendant. As noted above, Plaintiffs allege class
16 members lost several minutes of compensable time each shift by, inter alia, having to wait in long
17 lines to clock in and out, and losing time getting from their work stations to the break room and/or
18 time clocks due to the sheer size of the Ontario facility and QVC's unique policies that could result
19 discipline for failure to timely clock in/out. With the significant waiting time the employees faced
20 plus the controlled walking time in the warehouse, employees essentially were compelled to
21 subject themselves to well more than 6 minutes per shift congregating early and under
22 Defendant's control in order to avoid punishment for a late clock in. [Ardestani Decl., ¶ 16.]

23 In response, Defendant took the position that its time keeping policies are legally
24 compliant, that it accurately tracked and paid for all hours worked consistent with those policies,
25 and that any work done "off the clock" either on a meal period or before a shift was not sanctioned
26 and done without QVC's knowledge. Per QVC any time spent in line at the time stations or
27 traveling through the warehouse was accounted for, and per Defendant it specifically compensated
28 employees for their time walking between the entrance and exit of the distribution centers and the

1 time clocks. Per QVC, if any time went uncounted or unpaid for it was both aberrational and
2 against company policy, and a myriad of individualized inquiries would be required to resolve the
3 issue and accordingly class certification would be inappropriate. [Ardestani Decl., ¶ 17.]

4 For the meal and rest break claims, Plaintiffs argued Defendant frequently provided non-
5 compliant meal breaks in several ways. Per Plaintiffs, the Class Members had to spend their break
6 time 1.) traveling from the depths of Defendant's warehouse to the lobby where their lunches were
7 located (in refrigerators provided by Defendant), 2.) submitting to loss inspections off the clock
8 before leaving the premises for a lunch, and 3.) having to spend break time waiting in line to clock
9 in to return to work. Thus, Plaintiff alleged nearly all meal periods were impacted by one or more
10 of these factors and thus non-compliant. [Ardestani Decl., ¶ 18.]

11 In response, Defendant argued its break policies were fully compliant with California law,
12 and that it provided all required meal periods and thereby met its obligations under the Labor
13 Code and Wage Order. Further, Defendant argued it provided employees with a net 30 minutes for
14 their meal breaks and accounted for any time potentially spent waiting in line to clock out or
15 walking through the warehouse. QVC also noted that to the extent employees missed a meal break
16 or took a non-compliant break, any such discrepancies were aberrational and against company
17 policy and a myriad of individual issues would be required to determine if the potential violation
18 resulted from employee choice or some other reason. Consequently, per the Defendant,
19 individualized inquiries would dominate on this issue and render class certification inappropriate.
20 Defendant also argued it paid hundreds of break premiums for documented meal period violations.
21 [Ardestani Decl., ¶ 19.]

22 As with meal breaks, Defendant argued its rest break policies complied with California law
23 and authorized and permitted employees to take all required breaks and that all breaks were at
24 least a net 10 minutes. Defendant further contended that, in light of the fact that it is not required
25 to maintain a record of rest periods, any evidence of failure to authorize rest periods and/or
26 discouragement from taking rest periods would be purely anecdotal and individual issues would
27 predominate on liability. Defendant also may contend that it is only liable if Plaintiff can prove, on
28 a shift-by-shift basis, the aggrieved employees actually did not receive a fully compliant rest

1 break. This arguably would make a trial unmanageable since the number of instances an employee
2 missed a rest break would have to be tested on a case by case basis to determine if there was
3 compliance. [Ardestani Decl., ¶ 20.]

4 Plaintiffs' based their expense reimbursement claim on the need to use their personal
5 mobile devices for company business, for which they were not reimbursed as required by Labor
6 Code section 2802 and Cochran v. Schwan's Home Serv., Inc. (2014) 228 Cal.App.4th 113 (2014)
7 ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code
8 section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans
9 with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their
10 cell phone bills."). On the other hand, Defendant argued there was no conceivable reason for Class
11 Members to use their own phones while on the clock and working, and thus any use of personal
12 phones was not necessary and not reimbursable. [Ardestani Decl., ¶ 21.]

13 Finally, Plaintiffs also alleged derivative claims under Labor Code § 226 (alleged
14 inaccurate wage statement violations) and §§ 201-203 (waiting time penalties). These claims were
15 based on the "off the clock" unpaid wage claim and the overtime regular rate claims, and will rise
16 or fall along with that primary claim, in addition to being subject to "good faith" and other
17 defenses available to Defendant. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157,
18 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even
19 though the class prevailed on the merits on the underlying claim for failing to pay living wages).
20 Accordingly, Plaintiffs discounted the derivative claims significantly in light of these multiple
21 potential defenses. [Ardestani Decl., ¶ 22.]

22 As far as potential PAGA liability, the theoretical penalties theoretically totaled around
23 \$5 million should Plaintiffs prevail on all claims and establish violations of the multiple Labor Code
24 sections at issue for every single eligible pay period. [Ardestani Decl., ¶ 23.] As with the class
25 claims, Plaintiffs discounted the potential PAGA penalties for the multi-layered defenses proffered
26 by Defendant on the merits, and further discounted these claims since the Court possesses wide
27 discretion to reduce such penalties even if Plaintiffs ultimately prevailed. Fleming v. Covidien (C.D.
28 Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the potential penalties by over 82%

1 after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a bench trial,
2 the trial court awarded penalties of just \$5 per pay period, a 90% reduction, which decision was
3 upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist.
4 Lexis 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated \$25,000 to
5 PAGA penalties, which amount is reasonable and in line with comparable settlements in other class
6 actions in California. Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S.
7 Dist. LEXIS 137182 (granting final approval of \$5,000 PAGA penalty from \$370,000 settlement,
8 or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017)
9 2017 U.S. Dist. LEXIS 116303 (finding a \$7,500 PAGA payment reasonable when measured
10 against the overall settlement of \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2
11 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA
12 portion of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg.
13 Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with
14 PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the
15 LWDA, and the LWDA has not objected to the settlement").

16 Thus, Defendant raised significant procedural and merits defenses to Plaintiffs' claims, any
17 one of which, if successful, could have derailed Plaintiff's case. Accordingly, Plaintiffs faced risky
18 issues going forward with this litigation, and given the need to secure class certification, try the
19 case, and deal with post-trial appeals, it would have taken years to realize any recovery in this
20 action. Plaintiffs and their counsel discounted the value of the class claims consistent with the
21 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
22 greater benefit if the litigation continued. Plaintiffs and counsel concluded – in light of these very
23 real and substantial risks – settlement on the proposed terms and without prolonged and costly
24 litigation was in the best interests of the class. The overall \$1,500,000 recovery represents a
25 significant percentage of Defendant's potential exposure and given these risks addressed above, a
26 total recovery for the class of \$1,500,000 is a fair result within the range of reasonableness
27 considering all potential outcomes. [Ardestani Decl., ¶¶ 24-26; Nordrehaug Decl., ¶ 6-10.]
28

1 Importantly, the mere fact that a settlement does not provide the same recovery as might be
2 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
3 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
4 settlement process...even if the relief afforded by the proposed settlement is substantially
5 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
6 settlement because the public interest may indeed be served by a voluntary settlement in which
7 each side gives ground in the interest of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir.
8 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
9 different from the question whether the settlement is perfect in the estimation of the reviewing
10 court”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135,
11 1150 (“The fact that a proposed settlement may amount to only a fraction of the potential recovery
12 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
13 disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d
14 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented
15 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement
16 is non-reversionary and will provide timely benefits to the Class Members without a claims
17 process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action
18 Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
19 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
20 claims process may indicate lack of fairness). Plaintiffs and their counsel submit the settlement is
21 within the “range of reasonableness,” and is fair and adequate for the Class.

22 **D. Plaintiffs’ Enhancements**

23 A modest incentive award for Plaintiffs is appropriate under applicable law. See Staton v.
24 Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service
25 and incentive payments ranging from \$2,000 to \$25,000). Both devoted time and resources to the
26 litigation, provided documents, assisted Class Counsel with investigating the claims asserted and
27 in preparing for mediation. The service payment provided to Plaintiffs as the class representative
28 is typical in class action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563

1 F.3d 948, 958-59 (incentive awards are “intended to compensate class representatives for work
2 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
3 action, and, sometimes, to recognize their willingness to act as a private attorney general.”).

4 Here, the Settlement Agreement provides for an enhancement of up to \$10,000.00 to each
5 Plaintiff. These requests are reasonable given the risks they undertook on behalf of the Class
6 Members. By contacting and retaining counsel to pursue these claims, Plaintiffs helped make this
7 settlement possible for the absent Class Members, while shouldering the risk of being liable for
8 Defendant’s litigation costs. Plaintiffs also exposed themselves to unwanted notoriety related to
9 filing a public lawsuit (discoverable even through a simple google search) for the benefit of other
10 employees, placing themselves at risk of discrimination by future prospective employers. Among
11 taking many other actions assisting in the successful litigation of this case, Plaintiffs provided
12 substantial factual information and documents to counsel, attended numerous meetings/phone
13 conferences with counsel to discuss the case, and kept abreast of all significant developments, all
14 as set forth in their respective declarations filed at preliminary approval. [Ardestani Decl., ¶ 19;
15 Nordrehaug, ¶ 15.]

16 **VI. SETTLEMENT ADMINISTRATION COSTS**

17 The settlement provides for a payment to Simpluris for its services as the Settlement
18 Administrator. As set forth in the Declaration of Markus Balthuis, Simpluris has performed and
19 will continue to perform its required duties through final distribution of the settlement funds and
20 incurred \$18,000 in fees and expenses. [Balthuis Decl., ¶ 14.] Accordingly, Plaintiffs respectfully
21 request the Court approve payment of \$18,000 to Simpluris from the GSA. [Ardestani Decl.,
22 ¶ 28.]

23 **VII. ATTORNEY’S FEES AND COSTS**

24 **A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be** 25 **Approved**

26 This Court has discretion over the amount of attorneys' fees awarded and court
27 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
28 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82

1 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
2 marketplace for cases involving significant contingent risk, such as this one. Deposit
3 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.
4 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
5 private bargaining, if it were truly possible, might have reached" in determining a reasonable
6 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
7 litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and
8 justified by the work performed, the benefits obtained, and the contingent risk assumed.

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

16 Nonetheless, Plaintiffs succeeded and expeditiously obtained the relief they set out to
17 obtain, and the settlement provides substantial cash payments to Class Members, with an
18 average award of about \$430, and with a maximum award of over \$1,000. Importantly as
19 well, the Class Members have been overwhelmingly supportive of the Settlement as there are
20 no objections to the settlement and only one opt out. [Balthuis Decl., ¶¶ 12-132.]

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

22 The United States Supreme Court has ruled the parties to a class action properly may
23 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
24 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
25 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
26 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
27 should not result in a second major litigation. Ideally, of course, litigants will settle the
28 amount of a fee." The United States Supreme Court has reemphasized this policy and further

1 stressed trial courts have “a responsibility to encourage agreement” on fees. Blum v. Stenson
2 (1984) 465 U.S. 886, 902 n.19.

3 As part of the Settlement, Defendants agreed not to object to an award of no more than
4 1/3 of the GSA for attorney's fees, or \$500,000, and up to \$33,000 in reimbursement for
5 litigation costs and expenses (only \$30,043.56 is requested). Such a fee is commensurate with
6 what the market would provide for similar services and the Court therefore can most certainly
7 enforce the agreement. As California's Court of Appeal has instructed:

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

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

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

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

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

27 The recognized advantages of the percentage method-including relative ease of
28 calculation, alignment of incentives between counsel and the class, a better
approximation of market conditions in a contingency case, and the encouragement it
provides counsel to seek an early settlement and avoid unnecessarily prolonging the

1 litigation convince us the percentage method is a valuable tool that should not be
2 denied our trial courts.

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

4 Indeed, both California and federal courts have long recognized an appropriate method
5 for determining the award of attorney's fees is based on a percentage of the total value of
6 benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,
7 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.
8 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
9 recovered operates to "spread litigation costs proportionately among all the beneficiaries so
10 that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

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

19 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
20 this action of 1/3 of the total amount recovered by the Class via the lawsuit, or \$500,000. The
21 percentage requested is justified for the reasons set forth further below, comports with this
22 Court's standard fee award as set forth in the Preliminary Approval Order, and further is in
23 line with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review of class
24 action settlements shows that courts have historically awarded fees in the range of 20 to 50
25 percent, depending upon the circumstances of the case. In re Warner Communications Sec.
26 Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common
27 fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) §
28 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from

1 a common fund in order to assure that the fees do not consume a disproportionate part of the
2 recovery obtained for the class, although somewhat larger percentages are not
3 unprecedented.").

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

5 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
6 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
7 an objective measure of the work performed into the calculation of a reasonable attorney fee."
8 Laffitte, 1 Cal.5th at 504. Here, Class Counsel collectively spent 434.6 hours of time on this
9 matter, resulting in a modest and very reasonable lodestar of \$322,941.25.

10 As is fully detailed in the Ardestani Declaration and the Nordrehaug Declaration,
11 Class Counsel's efforts included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff
12 and the putative class, including legal research, obtaining Plaintiffs' employment records, research
13 into similar claims and claims against other employers in the same industry, and attempts to locate
14 and contact other employees of Defendant; (2) drafting a PAGA notice letter; (3) drafting the
15 initial complaints and related documents; (4) case management, including communications with
16 defense counsel, meeting and conferring/preparing case management statements, etc.; (5) lengthy
17 discussions with defense counsel regarding settlement/mediation and informal discovery needed
18 for meaningful settlement discussions; (6) engaging in substantial informal discovery, including
19 propounding informal discovery "requests" and reviewing documents and other information
20 produced; (7) drafting a mediation brief and accompanying damages model after review and
21 analysis of defendant's informal discovery production; (8) attending an all-day mediation;
22 (9) negotiating and drafting the settlement agreement and related documents; (10) drafting the
23 amended complaint; (11) drafting the motion for preliminary approval and supplemental papers re:
24 changing the notice period; (12) administration of the settlement, communications with the
25 Settlement Administrator and settlement class members; (13) drafting the motion for final
26 approval and motion for attorney's fees, and attending the final approval hearing; and
27 (14) extensive communications with the Plaintiffs regarding case status, case investigation and
28 document review, mediation, and settlement terms. Additionally, Class Counsel will incur

1 additional time to attend the final approval hearing and following final approval to, inter alia,
2 respond to class member inquiries, work with the Settlement Administrator on the distribution of
3 settlement funds, and on the compliance hearing. [Ardestani Decl., ¶ 230, Exh. 2; Nordrehaug
4 Decl., ¶ 11; Exh. 2.]

5 In pursuing this matter, Class Counsel incurred total attorney's fees of \$322,941.25,
6 and the lodestar is based on a very reasonable number of hours worked to litigate this matter to a
7 successful conclusion (434.6 attorney hours), and the requested attorney hourly rates are
8 reasonable and comport with hourly rates charged by other attorneys with similar experience in
9 this practice area in California. [Ardestani Decl., ¶¶ 31-41; Nordrehaug Decl., ¶¶ 11-14.] On a
10 lodestar basis, the fee request of \$500,000 results in a multiplier of 1.55, which is a modest
11 enhancement entirely in line with California law. [Ardestani Decl., ¶¶ 31-41; Nordrehaug Decl.,
12 ¶¶ 11-14.] Indeed, California courts routinely approve multipliers in the in the 2-4 range to
13 compensate for the time and risk of class action cases. Chavez v. Netflix, Inc. (2008) 162
14 Cal.App.4th 43, 66 (affirming attorneys' fee award including an upward multiplier of 2.5);
15 Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); City of
16 Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).
17 Class Counsel submits that the requested 1.55 multiplier effectively operates to show that the
18 percentage fee request is reasonable considering the challenges presented in this contingency
19 fee matter, and appropriately compensates Class Counsel for the contingent risk assumed and
20 delay in payment during the 2+ years counsel has been representing Plaintiffs. Thus, the
21 multiplier results in a fee constituting a fair return on the contingency.

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

24 What has now emerged in most fee award decisions is the recognition that fee
25 determinations in both common fund and statutory fee situations are incapable of
26 mathematical precision because of the intangible factors that must be resolved in the court's
27 discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In
28 determining an appropriate fee in a common fund case, a Court must decide, based on the

1 unique posture of each case, what percentage of the common fund would most reasonably
2 compensate Class Counsel given the nature of the litigation and the performance of counsel.
3 Paul, Johnson, Alston & Hunt v. Grauly (9th Cir. 1989 886 F.2d 268, 272) (the benchmark
4 percentage fee may be adjusted to account for the circumstances involved in a case).

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

9 1. The Results Achieved.

10 Class Counsel obtained an excellent result in this case for the Class Members. The
11 Settlement provides real monetary benefits to the Class Members, and the Settlement is
12 particularly advantageous to the Class Member because the proceeds will be distributed
13 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
14 Considering many individual claims would be very modest and would not be cost-effective to
15 pursue successfully, the Settlement provided them with fair compensation for their claims.
16 Moreover, the absence of any objection to either the Settlement or the attorney's fee request
17 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated
18 by the fact that only one class member opted out. Additionally, the settlement amounts to a
19 substantial percentage of the maximum value of the amount the Class might have obtained if
20 it had tried the case and recovered on all theories seeking recovery of wages and penalties.
21 "It is well-settled law that a cash settlement amounting to only a fraction of the potential
22 recovery does not per se render the settlement inadequate or unfair." In re Omnivision Techs.,
23 Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

24 2. Class Counsel Bore Considerable Risk.

25 At the time of filing the complaint, Class Counsel recognized that they would have to
26 expend a substantial amount of time and advance significant costs to prosecute a statewide
27 class action suit with no guarantee of compensation or reimbursement, in the hope of
28 prevailing against a sophisticated company represented by first-rate attorneys. Despite

1 their belief in the merits of Plaintiffs' claims, they also knew they faced substantial risks of
2 class certification and the ability to prove class-wide and individual damages. In light of the
3 highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would dig
4 in and attempt to bury their small firm in work. Given the small size of Class Counsel's
5 respective firms, not receiving any compensation for several years while simultaneously
6 advancing litigation costs posed considerable risk and difficulty. [Ardestani Decl., ¶¶ 42-43.]

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

8 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
9 experience. The issues presented in this case required more than just a general appreciation of
10 wage and hour law and class action procedure. This Settlement was possible only because
11 counsel persuaded Defendant that Plaintiffs and the putative class had a realistic chance
12 of prevailing on their claims despite Defendant's contrary arguments, and that the case
13 would be pursued through class certification and trial if necessary. In successfully
14 navigating these hurdles, Class Counsel displayed appropriate skill while pursuing a risky
15 and difficult case.

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

17 There is a substantial difference between the risk assumed by attorneys being paid
18 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
19 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249,
20 1256. The attorney working on a contingent basis can only log hours while working
21 without pay towards a result that will hopefully entitle him to a market fee considering
22 the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee
23 attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this
24 risk in this all or nothing contingent fee case wherein the necessity and financial burden
25 of private enforcement makes the requested award appropriate.

26 Counsel retained on a contingency fee basis, whether in private matters or in class
27 action litigation, is entitled to a premium beyond their standard, hourly, non-contingent
28 fee schedule to compensate for both the contingent risk assumed and the delay in

1 payment. The simple fact is that despite the most vigorous and competent of efforts,
2 success is never guaranteed. McKittrick v. Gardner (4th Cir. 1967) 378 F.2d 872, 875.
3 Indeed, if counsel is not adequately compensated for the risks inherent in difficult class
4 actions, competent attorneys will be discouraged from prosecuting similar cases.
5 Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132-33; Cazares v. Saenz (1989) 208
6 Cal.App.3d 279, 287.

7 Here, the contingent fee practices of Plaintiffs' counsel simply do not accommodate
8 the investment of unnecessary time in a case, and the adverse resolution of any one of several
9 difficult issues present in this matter could have doomed the entire effort. As discussed, the
10 attorney's fees in this case were not only contingent but fairly risky, and there was always a
11 chance Plaintiffs' counsel would receive nothing for any number of reasons. [Ardestani Decl.,
12 ¶¶ 42-43.] Accordingly, the contingent nature of the fee and the financial burdens on Class
13 Counsel and Plaintiffs also support the fee requested.

14 5. Awards in Other Cases

15 As discussed, the attorney's fees requested by Class Counsel are within the range of
16 fees awarded in comparable cases, and review of class action settlements over the past 10
17 years shows that the courts have historically awarded fees in the range of 20 to 50 percent,
18 depending upon the circumstances of the case. In re Warner Communications Sec. Litig.
19 (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund
20 cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp.
21 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common
22 fund in order to assure that the fees do not consume a disproportionate part of the recovery
23 obtained for the class, although somewhat larger percentages are not unprecedented."). Class
24 Counsel's requested fees equal to 1/3 of the gross amount recovered on behalf of the class and
25 are well within the range of reasonableness under either the percentage of the recovery or the
26 lodestar method in light of the contingent risk assumed, the delay in payment, the result
27 achieved, and the overall quality of the representation.

28 /////

1 **F. Class Counsel’s Costs and Expenses are Reasonable**

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

12 Per the Ardestani Declaration and the Nordrehaug Declaration, Class Counsel
13 together incurred a total of \$30,043.56 in expenses in connection with this matter. These
14 expenses include amounts paid for court filing fees, service of process, expert fees, and
15 postage, mediation fees, all of which are costs normally billed to and paid by the client.
16 These costs were reasonably incurred in the prosecution of this matter, and should be
17 reimbursed in full. Plaintiffs respectfully request that the Court authorize reimbursement
18 of counsel’s costs in the amount of \$30,043.56, including \$10,712.88 to Crosner Legal and
19 \$19,330.68 to the Blumenthal Nordrehaug firm. [Ardestani Decl., ¶¶ 46-47; Nordrehaug
20 Decl., ¶ 14; Exh. 2.]

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1 **VIII. CONCLUSION**

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

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10 Dated: May 6, 2025

CROSNER LEGAL, P.C.

**BLUMENTAL NORDREHAUG BHOWMIK DE
BLOUW LLP**

11
12
13 By: 

Sepideh Ardestani

Jamie Serb

Zachary Crosner

Norman B. Blumenthal

Attorneys for Plaintiffs Louis Noriega and Theresa
Moore