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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CARLOS HERNANDEZ MOTTO, Plaintiff, v. AMWARE FULFILLMENT, LLC; and DOES 1-100, inclusive, Defendants.	Lead Case No. 23STCV07785 Consolidated with Case No. 23STCV24821 Assigned for All Purposes To: Hon. Timothy Patrick Dillon Dept. SSC-15 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, AND REQUEST FOR ATTORNEY'S FEES AND COSTS** Date: July 14, 2026 Time: 10:00 a.m. Dept.: SSC-15

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I. INTRODUCTION

Plaintiff and Class Representative Carlos Hernandez Motto seeks final approval of a non-reversionary class action settlement resolving wage and hour claims on behalf of 214 Class Members Including all current and former non-exempt employees who worked either directly or via a staffing agency for Defendant Amware Fulfillment, LLC ("Amware" or "Defendant") in California during the Class Period of December 22, 2020 through June 26, 2025. The proposed total settlement is for an escalated amount $558,557,94 – which includes both $354,557.94 to be paid following final approval and $204,000 as a credit for previously funded individual settlements made as a direct result of Plaintiff's class action lawsuit. Overall the settlement provides about $182,554 in further cash payments to the Class, with an average award of about $847. The remaining balance will cover settlement administration costs, civil penalties to the state, and reasonable attorney's fees and costs. The parties and their counsel finalized the settlement after extensive and difficult arms-length negotiations overseen by an experienced and highly-regarded mediator. The Court conditionally certified the Class and preliminarily approved the settlement on December 24, 2025. Since then, the Court-approved notice form was mailed to the Class Members on March 26, 2026, and they reacted very favorably to the settlement. As of the date of this motion, only one class member has opted out of the settlement and there are no objections.

Further, Class Counsel secured an excellent settlement with Defendant after nearly three years of investigation, litigation, and settlement negotiation and administration, all without any compensation for services rendered or costs expended. The class notice duly informed the class members that Class Counsel would request attorney's fees not to exceed 1/4 of the initial Gross Settlement Amount, or $132,500, along with reimbursement of no more than $23,500 for actual costs incurred litigating this matter. As of the filing of this motion, *not one Class Member objected* to the proposed fee award. Consistent with the Settlement and Notice, Plaintiff now respectfully requests the Court award Class Counsel's fees in the amount of $132,500 and costs in the amount of $18,503.17, as described in the Declaration of Nikki Trenner ("Trenner Decl.") filed herewith. The requested attorney's fees are well within the range of reasonableness, especially considering the complex and risky nature of this litigation, the contingent risk assumed, and the nearly three year delay in payment and, when subjected to a lodestar crosscheck, results in fee request that is smaller than the base lodestar.

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

II. BACKGROUND/LITIGATION HISTORY

Defendant is a packaging, warehousing, and logistics services provider with locations in Arizona, California, Georgia, Illinois, New Jersey, and Texas. Plaintiff was employed by Defendant as a non-exempt forklift operator and maintenance technician from 2017 to 2023 at Defendant's Van Nuys warehouse. [Trenner Decl., ¶ 2.]

On April 10, 2023, Plaintiff commenced the Class Action Case by filing a complaint alleging the following causes of action against Defendant: (1) Recovery of Unpaid Minimum Wages and Liquidated Damages; (2) Recovery of Unpaid Overtime Wages; (3) Failure to Provide Meal Periods or Compensation in Lieu Thereof; (4) Failure to Provide Rest Periods or Compensation in Lieu Thereof; (5) Violations of Labor Code Section 226; (6) Failure to Timely Pay All Wages Due Upon Separation of Employment; (7) Failure to Reimburse Business Expenses; and (8) Unfair Competition. Plaintiff also submitted the required notice letter the LWDA under PAGA and timely exhausted his administrative remedies with the LWDA. Plaintiff did not receive notice from the LWDA that it intended to investigate the alleged violations outlined in her PAGA letter and on October 11, 2023, he commenced the PAGA Representative Case by filing a representative complaint for violation of the Private Attorneys General Act, Cal. Labor Code Sections 2698, et seq. [Trenner Decl., ¶ 3.]

Prior to the mediation, Defendant provided Plaintiff with extensive informal discovery, including Plaintiff's personnel, time, and payroll records, time and payroll records for a randomly selected sampling of Class Members, wage statement exemplars, Defendant's employee handbooks, including Defendant's policies and procedures regarding the payment of wages, the provision of meal and rest breaks, timekeeping policies (including recording hours), issuance of wage statements, and termination wages, expense reimbursement policies, as well as information regarding the number of putative Class Members who are current and former employees, the number of Aggrieved Employees, the number of workweeks throughout the Class Period, and the number of pay periods throughout the PAGA Period. From this information, Plaintiff was able to analyze Defendant's liability for the claims asserted in this case and, with the assistance of Plaintiff's experts at Berger Consulting Group, the potential exposure and damages. [Trenner Decl., ¶ 4.]

In March 2025, the Parties participated in mediation with Craig Ackermann, Esq., a respected wage and hour class action mediator. The mediation lasted a full day and with the mediator's assistance the Parties reached agreement on all major issues and ultimately prepared and executed a Memorandum of Understanding. [Trenner Decl., ¶ 5.] The Court granted preliminary approval to the proposed settlement on December 24, 2025.

Class notices were mailed to class members on March 25, 2026, with a 45-day window (to May 11, 2026) for class members to opt out of or object to the proposed settlement. [Declaration of Bryn Bridley ("Bridley Decl."), ¶¶ 6, 10-12.]

III. TERMS OF THE PROPOSED SETTLEMENT

Under the proposed settlement, and after application of the Escalator provision, Amware will pay a total of $558,557.94[1] into a common fund, the Gross Settlement Amount ("GSA"), including $354,557.94 payable upon final approval and $204,000 in credits for previously paid settlements entered into between Amware and approximately 79 class members shortly after Plaintiff filed his complaint. Reasonable attorney's fees of up to 25% of the initial GSA, or $132,500, actual litigation costs of up to $23,500 (only $18,503.17 is requested), a service award of up to $7,500 for plaintiff, settlement administration costs of $7,500.00, and an $8,000 payment for alleged civil penalties under PAGA,[2] all will be paid from the GSA. The remainder of approximately $182,554 will be allocated among the Participating Class Members based on their total weeks worked during the Class Period, while those

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[1] The Settlement Administrator determined that the Settlement Agreement's Escalator Clause was triggered, resulting in a 5.39% increase in the GSA. [Bridley Decl., ¶ 4.]

[2] Consistent with PAGA, $6,000 of that amount will go the LWDA for the State's share of the civil penalties, and the remaining $2,000 will be distributed pro rata to the Aggrieved Employees.

individuals who previously received a payment will receive an additional $50. No portion of the GSA will revert to Defendant. [Trenner Decl., ¶ 6.]

C. <u>**Certification of the Settlement Class**</u>

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 Defendant Amware Fulfillment, LLC ("Amware" or "Defendant") in California during the Class Period of December 22, 2020 through June 26, 2025. The Settlement Administrator ultimately mailed a total of 214 class notices on March 26, 2026. [Bridley Decl., ¶ 6.] Nothing has changed to require reconsideration of the Court's certification of the Settlement Class.

B. <u>**The Benefit Conferred on the Settlement Class**</u>

As noted, the escalated settlement obligates Amware to pay $558,557.94 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $182,554 from the GSA has been or will be distributed to the Participating Class Members. This is a cash settlement that <u>does not</u> 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. Twenty percent of each settlement share will be allocated to wages and the remaining s will be allocated to penalties, unreimbursed expenses, and interest. Amware will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. 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 California State Controller's Unclaimed Property Fund. [Trenner Decl., ¶ 7.]

Each Participating Class Member will receive a share of the Net Settlement Sum based on his or her position held and total weeks worked for Amware during the Class Period while employed as a non-exempt employee, while those individuals who received a prior payment will receive an additional $50. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of alleged unpaid wages, unpaid premium wages for missed meal breaks, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Defendant, and the number of instances they missed a break, were not provided compensation in lieu of such missed breaks, or lost wages due to Defendant's alleged improper payroll practices. [Trenner Decl., ¶ 8.]

The average class award will be approximately $847, and the awards will range from about $50 on the low end to over $5,150 on the high end. The average PAGA award will be about $12.58, and PAGA awards will range from about $0.54 to about $31.86. [Bridley Decl., ¶¶ 14-15.]

C. Settlement Administration

Atticus Class Action, as the Court-approved Settlement Administrator, mailed the Notice Packet to the Class Members after making all reasonable effort to ascertain the best mailing address, including running each address through the National Change of Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Bridley Decl., ¶¶ 4-9.] The Class Notice, previously approved by the Court, duly informed Class Members of the settlement terms, including the estimated relief each Class Member will receive, the amounts to be requested for attorney's fees and the class representative enhancement awards, and the right to opt out of or object to the settlement. [Bridley Decl., ¶ 6, Exh. A.] Atticus mailed 214 total Notice Packets on March 25, 2026. [Bridley Decl., ¶ 6.] As of the filing of this motion, eight Notice Packets were deemed undeliverable, for a 96% success rate. [Bridley Decl., ¶ 7.] The response window for opting out, objecting to the settlement, or submitting a dispute, expired on May 11, 2026. [Bridley Decl., ¶¶ 10-12.] As of the filing of this motion, Atticus has received one request for exclusion (for a 99.5% participation rate), zero objections to the settlement, and no disputes regarding the information used to calculate class member settlement shares. [Bridley Decl., ¶¶ 10-12.]

D. Release of Claims

Upon final approval, Participating Class Members shall forever release the Released Parties for the Released Claims for the Class Period, including all claims pleaded in the Operative Complaint, and which could reasonably have been alleged, based on the Class Period facts, allegations, and/or claims stated in the Operative Complaint, for work performed during the Class Period, and as specifically detailed in Section 6.2 of the Agreement. Additionally, the Aggrieved Employees will forever release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and PAGA Notice, and as more specifically detailed in Section 6.3 of the Agreement. [Trenner Decl., ¶ 9.]

E. PAGA Claims and Notice to the LWDA

The Parties allocated $8,000 to payment of civil penalties under PAGA for such claims against Amware, and Plaintiff submits that amount if fair, reasonable and adequate, and consistent with PAGA's underlying purposes, as addressed in more detail below. As required by Labor Code section 2699(*l*)(2), Plaintiff gave notice of the settlement and final approval hearing to the LWDA via its online portal. [Trenner Decl., ¶ 10; Exh. 1.]

IV. ARGUMENT

A. Standards For Approval

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

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

B. The Proposed Settlement Merits Final Approval

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

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

The settlement is not the result of fraud or collusion. Rather, the proposed settlement was reached following arm's-length negotiations presided over by Craig Ackermann, Esq., a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Trenner Decl., ¶ 5.] Moreover, Plaintiff and his counsel were well-informed about the facts and the law, and counsel Zachary M. Crosner, Nikki Trenner and Jamie Serb all 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., ¶¶ 24-32.] 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 only one Class Member requested exclusion for a 99.5% participation rate. [Bridley Decl., ¶¶ 7-8.] 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 (S.D.N.Y. 2001) 127 F.Supp.2d 418, 425 ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy") (internal quotation marks omitted).

C. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's Case and the Risks and Costs of Further Litigation

Prior to mediation, the parties engaged in extensive formal and informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding Amware's payroll practices, pay stubs and time records for a sampling of class members, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown of job positions, work weeks, rates of pay, and other information used to formulate a damages model. This extensive information then was analyzed by a consulting expert to look for meal and rest break violation rates, time spent working off the clock due to donning/doffing, security checks, etc., and other issues relevant to liability and damages. Plaintiff's counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class. [Trenner Decl., ¶¶ 4, 11.]

First, Plaintiff contends Defendant failed to pay all wages due by requiring Plaintiff and the Class Members to frequently work off the clock. Namely, Plaintiff alleges he and the Class Members were forced to wait in line to access the time clock every morning before their shifts began and every afternoon when clocking back into their shifts after their meal periods and on average employees had to wait in line between 5 and 7 minutes to access the timeclock at the beginning of their shifts and another 3-5 minutes to access the timeclock after their meal periods. Plaintiff also alleges Class Members were often instructed to perform work related duties while clocked out for meal periods. However, Defendant's time system would not allow employees to clock in early from their meal periods and accordingly it was impossible for them to record any time spent working while purportedly clocked out for a meal period. [Trenner Decl., ¶ 12.]

In response, Defendant contends its timekeeping policies accurately recorded employee hours worked and that it paid class members all wages due as required under applicable law. It further argued its policies strictly prohibited off the clock work or working during a break, and to the extent any such work occurred it was aberrational and done without management's knowledge or consent. White v Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). For the same reasons, Defendant argued that determining if any such violations occurred would require a multitude of individualized inquiries that would render class certification improper. Without taking into consideration any of Defendant's defenses to certification or on the merits, Plaintiff's expert calculated Defendant's maximum exposure for this claim at about **$402,000** in damages for unpaid wages based on a total of 15,791 uncompensated hours (i.e., 1 hour per week). [Trenner Decl., ¶ 13.]

Plaintiff also contends Defendant failed to provide legally compliant meal and rest breaks. Specifically, as to meal breaks, Plaintiff contends his analysis of the time and payroll records produced by Defendant reveals at least 8% of all shifts contained a unique meal period violation (i.e., late, short, or missed), which Plaintiff claims violates Labor Code sections 512, 226.7, and the applicable IWC Wage Orders, as well as Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004 and Augustus v. ABM Security Serv., Inc. (2016) 2 Cal.5th 257 for failure to provide all required meal periods and within the required time frames. Further, per Plaintiff only a handful of these violations were remedied by payment of the required one hour of pay for each such violation. Plaintiff also contends Defendant failed to provide duty-free rest periods to Class Members by similarly failing to relinquish control over how Class Members utilize their rest period time by prohibiting employees from taking naps or being inattentive during rest periods, and otherwise subjecting Class Members to policies imposing employer control during their break time. [Trenner Decl., ¶ 14.]

Defendant denies Plaintiff's contentions, claiming it made meal and rest breaks available to Class Members in compliance with California law. Defendant contends its meal and rest break policies are lawful and that Class Members were frequently reminded they were required to take all meal and rest breaks. Defendant also contends that time records demonstrate that Class Members took duty-free, timely meal and rest breaks. Defendant also contends its meal and rest break policies and practices comported with the flexibility the *Brinker* court held was integral to California's meal and rest period requirements. Finally, Defendant argues that Plaintiff's meal and rest break claims are not susceptible to common proof, as the claims would require individualized inquiry, including whether there was an unlawful companywide policy, whether employees had the opportunity to take meal and rest periods, whether they voluntarily chose to forego their meal and rest periods, and whether Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant contends these claims are vulnerable to a ruling that class treatment is not appropriate. Without taking into consideration any of Defendant's defenses to certification or on the merits, Plaintiff estimates Amware faces around **$3,047,000** in damages for meal period violations assuming a 100% violation rate and after accounting for meal period premiums paid. On the rest period claims, Plaintiff estimates around **$3,331,000** in damages, again assuming a 100% violation rate. [Trenner Decl., ¶ 15.]

For the expense reimbursement claims, Plaintiff argues Defendant required Class Members to use their personal cell phones to communicate with supervisors and coworkers throughout their shifts without reimbursement. In response, Defendant contends there was no need to use a personal cell phone in the performance of Class Member job duties, and if anyone did so it was purely for personal convenience and not a job requirement. Without accounting for any potential defenses, Plaintiff estimates he and the Class Members are entitled to over **$79,000** in expense reimbursement. [Trenner Decl., ¶ 16.]

On the inaccurate wage statement claims under Labor Code section 226 and claim for untimely payment all wages that were due and owing upon separation of employment, Plaintiff alleges derivative claims based on the primary claims for unpaid wages. Thus, should the primary claims fail, Plaintiff's claims for wage statement violations and waiting time penalties would also fail. Defendant also contends it would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of past wages. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1201. Further, Defendant contends Plaintiff would have to prove Defendant "willfully" failed to pay Class Members appropriate wages due upon separation of employment. Without taking into consideration any of Defendant's defenses to certification or on the merits, Plaintiff calculated Defendant's maximum exposure for waiting time penalties at about $592,400 for the alleged wage statement violations, and around **$786,240** in waiting time penalties based on 142 former employees during the limitations period. [Trenner Decl., ¶ 17.]

As far as potential PAGA liability, the theoretical civil penalties likely are around $2.48 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at issue. [Trenner Decl., ¶ 18.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on Defendant's various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated $8,000 to PAGA penalties.

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

Thus, Plaintiff and his counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $558,557.94 recovery represents a significant percentage of Defendant's potential exposure. Given Defendant's multi-layered defenses and all other potential risks of continued litigation, a total recovery for the class of $558,557.94 is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. [Trenner Decl., ¶ 20.]

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

V. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to Atticus for its services as the Settlement Administrator. As set forth in the Declaration of Bryn Bridley, Atticus performed and will continue to perform its required duties through final distribution of the settlement funds and incurred $7,500.00 in fees and expenses. [Bridley Decl., ¶ 17.] Plaintiff accordingly requests the Court approve payment of $7,500.00 to Atticus from the GSA. [Trenner Decl., ¶ 20.]

VI. PLAINTIFF'S ENHANCEMENT AWARD

Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of $7,500 for his service in bringing these claims on behalf of the Class. The request is reasonable given the risks he undertook on behalf of the Class Members, and by contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing himself at risk of discrimination by future prospective employers. As set forth in more detail in his declaration filed with the preliminary approval motion, 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 Carlos Hernandez Motto, ¶¶ 2-9 (filed August 11, 2025); Trenner Decl., ¶ 21.] 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).

VII. THE REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE AND SHOULD BE APPROVED

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

Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to obtain, and the settlement provides substantial cash payments to Class Members, with an average award of about $847, and with a maximum award of about $5,155. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement – there are no objections and only one opt out to the settlement. [Bridley Decl., ¶¶ 10-11.]

A. The Requested Fee Award Is Reasonable and Appropriate

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

As part of the Settlement, Defendant agreed not to object to an award of no more than 25% of the GSA for attorney's fees, or $132,500, and up to $23,500 in reimbursement for litigation costs and expenses (only $18,503.17, is requested). Such a fee is commensurate with what the market would provide for similar services and the Court therefore can most certainly enforce the agreement. As California's Court of Appeal has instructed:

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

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

Here, the parties did not negotiate the inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to the Class was completed. [Trenner Decl., ¶ 22.] The requested fee and cost award was a product of these arms-length negotiations and fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As a result, the fee agreed to by the parties should be approved.

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

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

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

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

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

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

Here, Class Counsel seek a fee award for their successful prosecution and resolution of this action of no more than 25% of the GSA, and specifically $132,500.00. The percentage requested is justified for the reasons set forth further below, and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements shows that courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

Indeed, in addition to the California Supreme Court's approval of a 1/3 fee in Lafitte, other courts in California likewise routinely approve fees of 1/3 of the gross settlement. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"). "Under the percentage method, California has recognized that most fee awards based on either a lodestar or percentage calculation are 33 percent . . . ." Smith v. CRST Van Expedited, Inc. (S.D. Cal. 2013) 2013 WL 163293, at *5. *See also* Bickley v. Schneider Nat'l Carriers, Inc. (N.D.Cal. Oct. 13, 2016) 2016 WL 6910261, at *4 (awarding attorney's fees of one-third of the recovery); Barbosa v. Cargill Meat Solutions Corp. (E.D. Cal. 2013) 297 F.R.D. 431, 449-450 (one-third of the settlement); Garcia v. Gordo Trucking, Inc. (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575 (approving attorney's fees of one-third of the common fund); Vasquez v. Coast Valley Roofing (E.D. Cal. 2010) 266 F.R.D. 482 (approving award of attorney's fees of one-third of the amount recovered by the class); Stuart v. RadioShack Corp. (N.D. Cal. 2010) 2010 WL 3155645 (awarding attorney's fees of recovery and noting the one-third award was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits."). Here, Plaintiff's counsel seeks a fee equal to only 25% of the gross settlement amount. Moreover, Plaintiff's counsel should be awarded fees based on the requested percentage of the initial $530,000 GSA, including the $204,000 in prior settlement payments. Such fees, or so-called "catalyst fees," are a legal mechanism by which defendants pay plaintiffs attorneys' fees when plaintiffs' lawsuit induces defendants to provide the relief sought by plaintiffs—in other words, when plaintiffs' lawsuit "catalyzes" defendant's conduct. Under California law, a plaintiff may qualify for an award of attorneys' fees even if the case is resolved before a final judgment if: (1) the lawsuit was a catalyst motivating the defendants to provide the primary relief sought in the litigation; (2) the lawsuit had merit; and (3) plaintiffs provided defendants with the opportunity to resolve the challenged issue before filing litigation (often referred to as "prelitigation notice"). Graham v. DaimlerChrysler Corp. (2004) 34 Cal.4th 553, 561. As explained in Plaintiff's Supplemental Brief in support of Preliminary Approval (filed on December 17, 2025), Plaintiff submits this matter satisfies the requirements of Graham and awarding fees based on a percentage of the full GSA is appropriate.

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

To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 206.2 hours of time on this matter, resulting in a modest and very reasonable lodestar of $161,945.

Over the two plus years this matter has been pending, Crosner Legal's efforts have included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal research, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other employees of the Defendant; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related documents; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (6) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (7) working with a consulting expert on the analysis of Defendant's informal production; (8) drafting a mediation brief and accompanying damages model after review and analysis of defendant's formal and informal discovery production; (9) attending an all-day mediation; (10) negotiating and drafting the settlement agreement and related documents; (11) drafting the consolidated amended complaint to effectuate the settlement; (12) drafting motion for preliminary approval, and attending the hearing; (13) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (14) final approval and attorney's fees, and attending the final approval hearing; and (15) extensive communications with the Plaintiff regarding case status, case investigation and document review, mediation, and settlement terms. [Trenner Decl., ¶ 23, Exh. 2.] Additionally, Class Counsel will incur additional time following final approval to, inter alia, respond to class member inquiries, attend to distribution of settlement funds, and on the compliance hearing.

In pursuing this matter, Class Counsel incurred total attorney's fees of $161,495, and the lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a successful conclusion (206.2 attorney hours). [Trenner Decl., ¶¶ 24-37, Exh. 2.] The requested attorney hourly rates are reasonable and comport with hourly rates charged by other attorneys with similar experience in this practice area in California. On a lodestar basis, the fee request of $132,500 is actually less than the base lodestar and accordingly there is no request to apply a lodestar enhancement.

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

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

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

1. The Results Achieved.

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

2. Class Counsel Bore Considerable Risk.

At the time of filing the complaint, Class Counsel recognized that they would have to expend a substantial amount of time and advance significant costs to prosecute a statewide class action suit with no guarantee of compensation or reimbursement, in the hope of prevailing against a sophisticated company represented by first-rate attorneys. Despite their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks of class certification and the ability to prove class-wide and individual damages. In light of the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's firm, not receiving any compensation for several years while simultaneously advancing litigation costs posed considerable risk and difficulty. [Trenner Decl., ¶¶ 38-39.]

3. The Skill Required and the Quality of Work.

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

4. The Contingent Nature of the Fee and Risk Assumed

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

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

Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate the investment of unnecessary time in a case, and the adverse resolution of any one of several difficult issues present in this matter could have doomed the entire effort. As discussed, the attorney's fees in this case were not only contingent but fairly risky, and there was always a distinct possibility Plaintiff's counsel would receive nothing for any number of reasons. Indeed, Class Counsel has, on multiple occasions, ultimately recovered no fee in several wage and hour class action cases despite investing substantial attorney time and out-of pocket costs. [Trenner Decl., ¶¶ 38-39.] Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel also support the fee requested.

5. Awards in Other Cases

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

E. Class Counsel's Costs and Expenses are Reasonable

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

As explained in the Trenner Declaration, Class Counsel incurred a total of $18,503.17 in expenses incurred in connection with this litigation. These expenses include the amounts paid for court filing fees, service of process, Case Anywhere charges, expert fees, postage, and mediation fees, all of which are costs normally billed to and paid by the client. These costs were reasonably incurred in the prosecution of this matter, and were necessary for the successful prosecution of the case and accordingly Plaintiff's counsel requests reimbursement for costs in the amount of $18,503.17, consistent with the cap imposed under the Settlement Agreement.

[Trenner Decl., ¶¶ 40-41.]

VIII. CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that the Court grant this motion and grant final approval of the proposed class action settlement and approve the payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of the Settlement Administrator's fees and expenses, approve the requested class representative enhancement payment, approve the award of attorney's fees and costs as requested, and enter judgment in this action. Finally, Plaintiff requests the Court set a non-appearance case review regarding settlement compliance for July 29, 2027, or a later date convenient for the Court.

Dated: June 16, 2026

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