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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA – SOUTH COUNTY

ANACAPA DIVISION

ELIZABETH PETERSEN, on behalf of all similarly situated persons and aggrieved employees, Plaintiff, vs. SUNRUN, INC., and DOES 1-50, Defendants.	**CASE NO.: 26CV03332** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR ORDER:** **1. APPROVING REQUEST FOR ATTORNEYS' FEES AND COSTS; AND,** **2. APPROVING REQUEST FOR PAGA REPRESENTATIVE ENHANCEMENT PAYMENT** Date: July 1, 2026 Time: 10:00 a.m. Dept: 3 Santa Barbara Superior Court Anacapa Division 1100 Anacapa Street Santa Barbara, CA 93101

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I. INTRODUCTION

Plaintiff's Counsel prosecuted this action, devoting a substantial amount of professional time to the case. Plaintiff's Counsel also outlaid $11,817.44 in out-of-pocket expenses to vindicate the rights of the Settlement PAGA Members. (See Declaration of Reuben D. Nathan filed in Support ("Nathan Decl.") ¶¶ 5-16, 18, 31, 71-78. Defendant contested Plaintiff's legal and factual positions and only through the perseverance of Plaintiff's Counsel's was Plaintiff able to bring this excellent $2,950,000.00 Settlement (or $32.24 per pay period per aggrieved employee) to the Court for approval.

By this application, Plaintiff's Counsel requests approval of attorneys' fees of $973,500.00 or 33% of the total settlement, and costs in an amount of $11,817.44. (Nathan Decl. ¶¶ 21-22, 71-78). The 33% requested is a reasonable percentage contingency fee under the "common fund" doctrine, to fairly compensate Counsel for the efforts undertaken, the risks overcome, and the results achieved. If the Court applies the lodestar approach, the fees requested reflect Counsel's lodestar of $282,765.00, with a multiplier of 3.44—a multiplier that courts routinely approve. *See Chavez v. Netflix, Inc.,* 162 Cal. App. 4th 43, 48 (2008) (recognizing multipliers generally range "from 2 to 4 or even higher.")

Plaintiff also seeks approval of a PAGA Representative Enhancement award of $10,000 for the named Plaintiff, for her work as PAGA Representative and for an extensive specific release of virtually any claim that can be released. This is a reasonable amount, given her service and outstanding results for the LWDA and PAGA aggrieved members. The $10,000 award requested reflects just a small percentage, 0.003%, of the Settlement, another factor courts consider when facing this question. See *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.,* 2017 WL 4685536, *10 (C.D. Cal. May 8, 2017) (court approved $25,000 incentive award, in part, because the award reflected just 0.2% of the settlement.) Plaintiff actively participated in this litigation, assisted Counsel whenever asked, provided documents and reviewed documents Defendant produced, and assisted in the preparation for, and was available during, the mediation. Nathan Decl. ¶¶ 80-81.

Plaintiff therefore requests that the Court grant the motion and award attorneys' fees in the amount of $973,500.00 (representing 33% of the Settlement or comprised of Class Counsel's lodestar of $282,765.00 and a multiplier of 3.44), costs in an amount of $11,817.44, and enhancement award in the amount of $10,000 for the named Plaintiff.

II. LEGAL ANALYSIS

A. The PAGA Representative Enhancement Payment Requested Is Fair And Reasonable

Courts approve enhancement payments to individuals like the Plaintiff to advance public policy by encouraging individuals to perform their civic duty in protecting the rights of the class, as well as to compensate class representatives for their time, effort, and inconvenience. *Manual For Complex Litigation* (4th Ed.) § 21.62 at 971. Enhancement payments "are fairly typical in class action cases." *In Re Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010); *Rodriguez v. West Publ. Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th Ed. 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to class Action Plaintiff: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006). "Courts routinely approve incentive awards to compensate named Plaintiff for the services they provided and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995); *Bell v. Farmers Ins. Exch.*., 115 Cal. App. 715, 726 (2004); *Parker v. Jekyll & Hyde Entm't Holdings, L.L.C.*, 2010 WL 532960, (S.D.N.Y. Feb. 9, 2010); *Asare v. Change Group N.Y., Inc.*, 2013 WL 6144764 (S.D.N.Y. Nov. 15, 2013); *DeWitt v. Darlington County,* 2013 WL 6408371 (D. S.C. Dec. 6, 2013); *Tiro v. Public House Invs., LLC*, 2013 WL 4830949 (S.D. N.Y. Sept. 10, 2013); *Craig v. Rite Aid Corp.*, 2013 WL 84928 (M.D. Pa. Jan. 7, 2013).

As stated, Plaintiff actively participated in this litigation and her assistance was invaluable. Plaintiff made herself available whenever needed, provided Counsel with information and documents regarding Defendant's operating policies and procedures, and responded to any questions that Counsel had throughout the case. Plaintiff's knowledge and experience was of great importance to Counsel as they performed a factual investigation into Defendant's employment policies and practices, investigated the case, responded to informal discovery, and prepared for and participated in one mediation. Nathan Decl. ¶¶ 80-81.

The enhancement payment requested is also warranted because Plaintiff prosecuted this action with the specter of future retaliation including within the industry when she first raised workplace issues in November 2025. As the *Parker* court explained: "[A]s employees suing their current or former employer, the Plaintiff face the risk of retaliation. The current employees risk termination or some other adverse employment action, while former employees put in jeopardy their ability to depend on the employer for references in connection with future employment. The enhancement awards provide an incentive to seek enforcement of the law despite these dangers." *Parker,* 2010 WL 532960, at *1. Other courts also recognize these risks. *See Asare*, 2013 WL 6144764, at *15 (Plaintiff "faced the risk that new employers would learn that they were class representatives in a lawsuit against their former employer and take adverse action against them. Moreover, each time they change jobs, they will risk retaliation in the hiring process."); *DeWitt,* 2013 WL 6408371, at *14 ("Service or incentive payments are especially appropriate in employment litigation, where the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the class as a whole, undertaken the risk of adverse actions by the employer or co-workers."); *Tiro*, 2013 WL 4830949, at *11 (significant risks of retaliation and "blacklist[ing]"); *Craig*, 2013 WL 84928, at *13 ("[P]laintiffs in FLSA or state wage and hour claims are often retaliated against in the industry as a result of their obvious participation in such litigation.") (citing *Shahriar v. Smith & Wollensky Rest. Group, Inc.,* 659 F.3d 234, 244 (2d Cir. 2011)). Stating the obvious, one court recognized that the fact that Plaintiff filed this lawsuit "is searchable on the internet and may become known to prospective employers when evaluating" him for employment. *Guippone v. BH S&B Holdings, LLC*, 2011 WL 5148650, at *7 (S.D.N.Y. Oct. 28, 2011).

Because of these risks, and the policy considerations outlined above, a substantial body of law supports enhancement payments in amounts significantly exceeding the $10,000 requested here. Courts routinely approve service awards well above this amount in both class and representative actions. See, e.g., *Galeener v. Source Refrigeration & HVAC, Inc.*, 2015 WL 12976106, at 3 (N.D. Cal. Aug. 20, 2015) ($27,000, $25,000, $15,000); *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, 2017 WL 4685536; 10 (C.D. Cal. May 8, 2017) ($25,000); *Glass v. UBS Fin. Servs., Inc.*, 2007 WL

221862, at 17 (N.D. Cal. Jan 26, 2007) ($25,000); *Spano v. Boeing Co.,* No. 06-0743-DRH, 2016 WL 3791123 at *8 (S.D. Ill. Mar. 31, 2016) ($25,000 and $10,000 awards where plaintiffs "initiated the action, took on a substantial risk, remained in contact with Class Counsel, and acted at all times for the benefit of the Class"); *Ingram v. Coca-Cola Co*., 200 F.R.D. 685, 694 (N.D. Ga. 2001) ($300,000 each); *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 203–04 (S.D.N.Y. 1997) (up to $85,000); *Van Vranken v. Atl. Richfield Co.,* 901 F. Supp. 294, 300 (N.D. Cal. 1995) ($50,000); *Enterprise Energy Corp. v. Columbia Gas Transmission Corp*., 137 F.R.D. 240, 255 (S.D. Ohio 1991) ($50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig*., 130 F.R.D. 366 (S.D. Ohio 1990) ($55,000 and $35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913–14 (S.D. Ohio 2001) ($50,000); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) ($25,000); *Friedman v. Guthy-Renker, LLC*, 2016 WL 6407362, at 8 (C.D. Cal. Oct. 28, 2016) ($57,000 awards, constituting 0.22% of the settlement); *In re High-Tech employee Antitrust Litig*. 2015 WL 5158730 at 17 (N.D. Cal. Sept. 2, 2015) ($80,000 to $120,000).

The same principles apply with equal force in representative actions under the Private Attorneys General Act ("PAGA"), where the named plaintiff undertakes additional responsibilities in acting as the State's proxy, including broader exposure, discovery burdens, and the obligation to represent the interests of absent aggrieved employees and the State of California. Courts approving PAGA settlements regularly authorize service awards in recognition of these efforts. See, e.g., *Rodriguez v. U.S. Autoparts Network, Inc*., 2020 WL 1897835, at 6 (C.D. Cal. Feb 4, 2020) (approving $15,000 service award in hybrid PAGA action); *O'Connor v. Uber Techs., Inc*. 201 F. Supp. 3d 1110, 1134-35 (N.D. Cal. 2016) (recognizing appropriateness of service awards in representative wage and hour litigation); *Haralson v. U.S. Aviation Servs. Corp*. 383 F.Supp.3d 959, 972 (N.D. Cal. 2019) (approving PAGA settlement and recognizing representative roles undertaken by plaintiff); *See Viceral v. Mistras Grp., Inc*. 2016 WL 5907869 at 9 (N.D. Cal. Oct. 11, 2016) (approving service award in hybrid class/PAGA case in light of plaintiff's efforts and risks).

Another factor courts consider when awarding enhancement payments is the percentage of the overall settlement represented by the award. In Flo & Eddie, Inc., the court approved a $25,000 incentive award in part because it represented only approximately 0.2% of the settlement. *Flo &*

Eddie, 2017 WL 4685536, at 10. This factor strongly supports approval here, as the requested $10,000 enhancement represents approximately 0.34% of the total $2,950,000 settlement fund. *See Newell v. Ensign United States Drilling* (California), Inc. 1:19-CV-01314 (approving $35,000 and $25,000 awards comprising approximately of 2.5% of the settlement). The modest percentage at issue here confirms that the requested enhancement is well within the range routinely approved by courts, including in PAGA representative actions.

B. <u>The Attorneys' Fees And Costs Requested Are Reasonable</u>

1. Counsel is Entitled to Attorneys' Fees Under Labor Code Section 2699(g)

PAGA carries with it a mandatory fee shifting statute under PAGA. Cal. Lab. Code Section 2699(g). As noted, Plaintiff has provided notice to the LWDA regarding all aspects of this settlement, including the amount of fees sought. Should the LWDA contact Plaintiff's counsel regarding any aspects of this settlement prior to the hearing date, counsel will promptly notify the Court. Nevertheless, Plaintiff submits that the requested fees and costs sought are reasonable. As set forth herein and in the Memorandum of Points and Authorities in Support of Motion for Final Approval of PAGA Settlement filed concurrently herewith, the parties engaged in and prepared for litigation and were committed to vigorously pursuing their respective claims and defenses. The parties exchanged a substantial volume of information to facilitate meaningful settlement discussions. Specifically, Defendant produced 43.6 MB of data in Excel, with 525,330 line items~~,~~ 3 Excel Sheets containing 101 KB of data for Plaintiff and 604 pages of documents (Plaintiff's employee files – containing a separate 205.7 mb of data) covering a total of 91,493 pay periods, which was made as a part of a negotiated sampling produced in preparation for mediation and further production of confirmatory documents produced post-mediation, which enabled Plaintiff to evaluate the strengths and weaknesses of the claims and to prepare for informed negotiations. The data produced were records for multiple years, divided between the years.

Examples of three California PAGA cases where courts awarded attorney fees:

In *Rodriguez v. Nike Retail Services, Inc.*, the California Court of Appeal affirmed an award of attorney fees to a prevailing PAGA plaintiff under Labor Code section 2699(g)(1). The court treated PAGA's fee-shifting language ("shall be entitled to an award of reasonable attorney's fees and costs") as a one-way fee provision favoring successful employees enforcing civil penalties on the state's behalf. *Rodriguez v. Nike Retail Services, Inc.*, 928 F.3d 810, 814-815 (9th Cir. 2019).

In *Lopez v. Friant & Associates, LLC*, a PAGA representative action resulted in a judgment that included attorney fees awarded to the prevailing employee's counsel pursuant to Labor Code section 2699(g)(1). The opinion discussed how courts should allocate civil penalties and fees while ensuring that the statutory 75 percent share to the LWDA and 25 percent share to aggrieved employees are maintained. *Lopez v. Friant & Associates, LLC*, 15 Cal.App.5th 773, 224 Cal.Rptr.3d 1 (Cal. Ct. App., 1st Dist. 2017).

2. <u>The Attorneys' Fee Award Requested Is Also Justified and Reasonable If the Court Were to Apply A Straight Lodestar Approach</u>

California law provides that when a party is entitled to statutory fees, he or she must be compensated for all time reasonably spent seeking to accomplish the desired litigation result. *Serrano v. Unruh*, 32 Cal.3d 621, 624 (1982) (*Serrano IV*). Courts must view the reasonableness of counsel's hours from the point at which the hours were expended, not from the vantage of hindsight, as Plaintiff are entitled to full compensation so long as "the time actually spent was reasonable and reflected good legal judgment [at the time]." *Dennis v. Chang*, 611 F.2d 1302, 1308 (9th Cir. 1980). As the Ninth Circuit explained in *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111, 1112 (9th Cir. 2008):

> It must also be kept in mind that lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee. It would therefore be the highly atypical civil rights case where plaintiff's lawyer engages in churning. By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker.

If not using the percentage method, California courts, in exercising their discretion to determine the appropriate fee, base their calculations on the "lodestar" and/or the "multiplier" method. *See PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1095 (2000) ("trial court has broad authority to determine the amount of a reasonable fee," ordinarily using lodestar/multiplier approach); *Press v. Lucky Stores, Inc.*, 34 Cal.3d 311, 322 (1982) (court's discretion should be based on lodestar adjustment method*); Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977) (*Serrano III*) (adopting lodestar adjustment approach).

Pursuant to the lodestar method, the Court calculates a base fee amount from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. The Court then adjusts the base amount in light of various factors articulated by the courts. *Serrano III*, 20 Cal. 3d 25, 48. Although *Laffitte* confirmed that trial courts are not required to employ a lodestar cross-check when considering attorneys' fee awards, *Laffitte v. Robert Half Int'l, Inc.,* 1 Cal. 5th 480 at 504 (2016), using this method here confirms that the 33% award Counsel requests is warranted.

The Plaintiff Counsel's firm worked no fewer than 269.3 attorney hours on this case. The lodestar incurred to date, not including time that will be spent attending the final approval hearing, working with the Administrator, is $282,765.00. Nathan Decl. ¶¶ 71-77. Counsel seeks $1,050.00 per hour for partner time. Courts throughout the State and commentators confirm the reasonableness of these rates. Nathan Decl. ¶¶ 53-70.

3. **Counsel's Hourly Rates**

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc. v. Drexler* 22 Cal. 4th 1084, 1095 (2000). When determining a reasonable hourly rate, courts consider the attorney's skill and experience, the nature of the work, the relevant expertise, and the attorney's customary billing rates. *Flannery v. California Highway Patrol* 61 Cal. App. 4th 629, 632 (1998). Counsel's billing rates are presumptively reasonable. *Russell v. Foglio*, 160 Cal. App. 4th 653, 661 (2008).

The rates awarded to attorneys of comparable experience in other cases in the same market are relevant when determining what is the reasonable rate. *Children's Hosp. & Med. Ctr. v. Bonta*, 97 Cal. App. 4th 740, 783 (2002); *United Steelworkers v. Retirement Income Plan*, 512 F.3d 555, 564 (9th Cir. 2008). As outlined in the Nathan Declaration, numerous courts have approved Counsel's requested hourly rates. Nathan Decl. ¶¶ 52, 65-66. This comparison further illustrates the reasonableness of the rates requested. To approve these rates, the courts had to make determinations regarding the reasonableness of the rates and the quality of the work performed by Counsel. Surveys of rates charged by counsel also support the reasonableness of the rates requested.

Nathan Decl. ¶ 59. Courts routinely rely on these types of surveys in determining the reasonableness of the hourly rates requested. See, e.g., *Berberena v. Coler*, 753 F.2d 629, 633 (7th Cir. 1985) (National Law Journal survey); *Dameron v. Sinai Hosp. of Baltimore, Inc.*, 644 F. Supp. 551, 558 (D. Md. 1986) (court referred to rates published in Compensation and Benefits Survey Report published by the Association of Legal Administrators, Los Angeles County, Orange County, and Beverly Hills).

Given the wealth of experience and the quality of work performed, Plaintiff's Counsel has earned excellent reputations in the legal community in the area of complex wage and hour litigation. Nathan Decl. ¶¶ 49-52. The 2026 hourly rate requested for the attorney who litigated this case is as follows: $1,050.00 per hour for Reuben Nathan. Nathan Decl. ¶¶ 53-69, 74. This current rate is commensurate with the prevailing market rates in the Los Angeles, Orange County and surrounding areas for attorneys with comparable experience and skill handling complex litigation. Nathan Decl. ¶¶ 58-61, 76.

Multiplying the number of hours reasonably expended on the merits in this litigation, through June 1, 2026, times the reasonable hourly rate yields the following lodestar:

Biller	Hours	Rate	Fees	Law School Year
TOTAL LODESTAR	**269.3**	$1,050	**$282,765.00**	1999

4. <u>Counsel's Hours Expended Are Reasonable</u>

Plaintiff seeks compensation for 269.3 attorney hours expended on this case from the beginning of the lawsuit through filing of this motion, plus the additional hours that Plaintiff's counsel will expend on the Final Approval hearing, and communications with the Settlement Administrator re final accounting, and post-judgment activities. Nathan Decl. ¶¶ 74-75.

Plaintiff's Counsel's time is supported by time summaries, which Counsel submit with this motion. Nathan Decl. ¶ 74. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254-255 (2001). All time reflected is fully compensable in calculating the lodestar, because counsel is entitled to be compensated "'for all time reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-paying client for all time reasonably expended on a matter.'" ç, 461 U.S. at 431 (citations omitted.) Accord, *Center for Biological Diversity v. County of San Bernardino*, 185 Cal. App. 4th 866, 897 (2010) ("absent 'circumstances rendering the award unjust, an . . . award should ordinarily include compensation for *all* the hours *reasonably spent.*") (emphasis in original); *Downey Cares v. Downey Community Dev. Comm'n*, 196 Cal. App. 3d 983, 997-998 (1997).

As set forth in the accompanying declaration of Counsel, Counsel exercised considerable billing judgment in preparing their billing records, excluding time spent on tasks that appeared insufficiently productive, or addressed other claims presented in this action. Nathan Decl. ¶ 74. See *Hensley v. Eckerhart*, 461 U.S. 424 at 434 (1983). Plaintiff seeks compensation only for those hours Counsel would have billed a regular commercial client, paying by the hour, after the exercise of billing judgment. Nathan Decl. ¶ 74. Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the client and other employees, investigating the facts and the law, and preparing initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). The fee award should also include fees incurred to defend the attorneys' fee claim. *Serrano IV*, 32 Cal. 3d at 639. Counsel will continue to work with the Administrator and performing post-distribution work, if required by the Court. Nathan Decl. ¶¶ 74-75.

5. The Court Should Enhance the Lodestar Figure By a Multiplier of 3.44

As stated, Plaintiff requests that the Court award a percentage of the Settlement pursuant to the common fund doctrine as an appropriate fee award, an approach approved by the courts. If this Court uses a lodestar approach as a cross-check, once the Court establishes the lodestar amount, it may enhance the fee by a multiplier to make an appropriate fee award. *Serrano III*, 20 Cal.3d at 48. Pursuant to this approach, with a reasonable multiplier, the fee request is also reasonable.

As explained in Newberg, "multipliers ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied. A large common fund award may warrant an even larger multiplier." (Newberg on Class Actions, Vol. 3, §14.03, pp. 14-15, Dec. 1992.) These principles have been adopted by California courts applying the lodestar-multiplier method more broadly in representative and fee-shifting litigation, including wage-and-hour and PAGA cases, and are not limited to traditional Rule 23 class actions. In *Van Vranken v. Atlantic Richfield Co*., the court noted that multipliers in the range of 1–4 are commonly awarded to reflect the contingent risk and results obtained. *Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294, 298 (N.D. Cal. 1995). Addressing this same question, *Chavez v. Netflix, Inc.* cited *Wershba* and reaffirmed that multipliers can range from 2 to 4 or even higher, underscoring that the lodestar-multiplier analysis used in common fund class actions should equally apply in other representative and statutory fee contexts such as PAGA enforcement actions. *Chavez v. Netflix, Inc.,* 162 Cal. App. 4th 43, 64-65 (2008) (quoting *Wershba*, 91 Cal. App. 4th at 255).

For cross-checking purposes, applying these factors to this case demonstrates that Counsel should be awarded fees based on a multiplier of 3.44. The purpose of augmenting the lodestar by a multiplier is to entice competent counsel to undertake public interest litigation and to ensure that there are no market disincentives to litigating these socially important cases. *See Drexler,* 22 Cal.4th at 1095. Per *Ketchum v. Moses,* 24 Cal. 4th 1122 at 1132 (2001), it is not intended as a bonus, reward, or penalty, but rather:

> The purpose of such an adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services.

This 3.44 multiplier request will most accurately replicate the applicable fees market, as it is an equivalent amount to that sought from the common fund. *See Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19 at 40-50 (2000) (lodestar may be enhanced to approximate market and reflect percentage recovery); *Glendora Comm. Redev. Agency v. Demeter,* 155 Cal. App. 3d 465, 479-80 (1984) (statutory fee award may be based on contingency fee percentage).

6. <u>Contingency Risk</u>

The California Supreme Court iterated the importance of enhancing the lodestar for contingent risk in order "to bring the financial incentives for attorneys enforcing important ... rights ... into line with incentives they have to undertake claims for which they are paid on a fee-for services basis." *Ketchum v. Moses,* 24 Cal. 4th 1122, 1132 (2001).

The adjustment to the lodestar figure, e.g., to provide a fee enhancement reflecting the risk

> that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees.

Id. at 1138. Under California fee-shifting law, contingent risk is "[o]ne of the most common fee enhancers." *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 579 (2004); *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, at 1216 (2008). *See, e.g., Cotchett, Pitre & McCarthy v. Universal Paragon Corp.*, 187 Cal. App. 4th 1405, 1423 (2010) (awarded a fee resulting in a 7.0 multiplier).

To obtain a risk enhancement, Plaintiff need not show that the enhancement is necessary to make up for lost cases. *Amaral*, 163 Cal. App. 4th at 1217. The primary purpose of risk enhancements is not to make up for lost cases but "to compensate for the risk of loss generally in contingency cases as a class." *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1419 (1991). It is the risk of winning the case that is the crucial factor; not the risk of prevailing while failing to obtain a fee award, but rather the risk of losing the litigation. *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 579 (2004). The risk multiplier is not limited to cases providing great public value; they must be considered in every contingent statutory fee-shifting case. *Greene v. Dillingham Constr. N.A., Inc.*, 101 Cal. App. 4th 418, 428 (2002). *See, e.g., Bender v. County of Los Angeles*, 217 Cal. App. 4th 968, 988 (2013) (rejecting claims that case was "straightforward," and rates were "substantial," court awarded fees for all hours, even though it was an "ordinary" contingent case.)

Counsel seeks attorneys' fees in the amount of $973,500.00, which is 33% of the Settlement. The fees requested are warranted given the time and effort Counsel spent on this matter. Nathan Decl. ¶¶ 5-18, 71-75.

California has long recognized that counsel who creates or preserves a fund for the benefit of others is entitled to be compensated from that fund. This principle was established by the United States Supreme Court in *Trustees v. Greenough*, 105 U.S. 527, 532-533 (1881), and extended in *Central Railroad & Banking Co. of Georgia v. Pettus*, 113 U.S. 116, 127-128 (1885), where the Court recognized attorneys' independent equitable claim to reasonable compensation from a fund their efforts created, regardless of contractual obligations owed by their own clients. The Supreme Court later reaffirmed that this rule "rests upon the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant's expense." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

The Ninth Circuit follows this approach, explaining that "the common fund theory comes from equity. The purpose of this doctrine is to avoid unjust enrichment and to 'spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone….'" *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977).

California courts apply these same principles. In *Quinn v. State of California*, 15 Cal.3d 162, 167 (1975), the Supreme Court explained that the exception to the American Rule is now as well established as the rule itself: one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs. California courts have consistently applied this equitable power in representative actions. *See Samura v. Kaiser Found. Health Plan, Inc.*, 17 Cal.App.4th 1284, 1297 (1993); *Serrano v. Priest*, 20 Cal.3d 25, 35 (1977) (*Serrano III*) ("[W]hen a number of persons are entitled in common to a specific fund, an action brought by a plaintiff for the benefit of all results in the creation or preservation of that fund, such that plaintiff may be awarded attorney's fees out of the fund."). Such "fee spreading" assures that all those benefited by the litigation pay their fair share of obtaining the recovery. *Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 26 (2000); *Earley v. Superior Court*, 79 Cal.App.4th 1420, 1435–36 (2000); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001).

The California Supreme Court reaffirmed this foundational principle in *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 488–89 (2016): California has long recognized, as an exception to the general American rule that parties bear the costs of their own attorneys, the propriety of awarding an attorney fee to a party who has recovered or preserved a monetary fund for the benefit of himself or herself and others. In awarding a fee from the fund or from the other benefited parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment.

Although the common fund doctrine developed primarily in the class action context, its underlying rationale, preventing unjust enrichment of those who benefit from litigation they did not fund, applies with equal force to PAGA representative actions. In a PAGA settlement, the named plaintiff prosecutes claims on behalf of aggrieved employees and the State of California, and the resulting settlement fund benefits all aggrieved employees. It would be inequitable to require the named plaintiff and counsel to bear the full burden of that effort while others receive the benefit without contribution to the costs. *See* Lab. Code § 2699(g)(1) (providing for attorneys' fees to a prevailing PAGA plaintiff); *Harrington v. Payroll Entm't Servs.*, Inc., 160 Cal.App.4th 589, 594 (2008) (a prevailing PAGA plaintiff is entitled to reasonable attorneys' fees). Courts approving PAGA settlements regularly award fees from the settlement fund using either the percentage-of-recovery or lodestar method. *See, e.g.*, *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869, at *9 (N.D. Cal. Oct. 11, 2016); *Haralson v. U.S. Aviation Servs. Corp.*, 383 F.Supp.3d 959 (N.D. Cal. 2019).

In *Laffitte*, the California Supreme Court joined the overwhelming majority of federal and state courts in holding that when representative litigation establishes a monetary fund for the benefit of others, the court may determine the amount of reasonable attorneys' fees by choosing an appropriate percentage of the fund created. 1 Cal.5th at 503. *See also Lealao*, 82 Cal.App.4th at 27 ("percentage fees have traditionally been allowed in such common fund cases").

Empirical data confirms that fee awards averaging one-third of the recovery are the norm. Per *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558 n.13 (2009): "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." A 1999 analysis of 1,349 shareholder class actions concluded that fee amounts average approximately 32% of the settlement award. D. Martin et al., *Recent Trends IV: What Explains Filings and Settlements in Shareholder Class Actions*, 5 Stan. J.L. Bus. & Fin. 121, 141. As Professor Rubenstein explains, 50% of the fund is generally the upper limit to assure that fees do not consume a disproportionate part of the recovery, though somewhat larger percentages are not unprecedented. Rubenstein & Newberg, *Newberg and Rubenstein on Class Actions* (6th ed.), § 15.83, at p. 370.

Federal courts consistently approve fee awards in the 30–40% range in California wage and hour matters. *See, e.g.*, *Cicero v. DirecTV, Inc.*, 2010 WL 2991486, at *7 (C.D. Cal. July 27, 2010); *Williams v. Costco Wholesale Corp.*, 2010 WL 2721452, at *6 (S.D. Cal. July 7, 2010); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491–92 (E.D. Cal. 2010); *Singer v. Becton Dickinson*

& Co., 2010 WL 2196104, at *8 (S.D. Cal. June 1, 2010); *Romero v. Producers Dairy Foods, Inc.*, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007); *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 448 (E.D. Cal. 2013); *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294, 297–98 (N.D. Cal. 1995) (surveying 73 opinions with fees ranging from 30–50%); *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (33%); *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (33%).

The percentage awarded must account for the risks counsel assumed. There is a fundamental difference between counsel paid by the hour (who can rely on payment regardless of outcome) and contingency counsel, who logs hours without pay toward a result that may never materialize. *Powers v. Eichen*, 229 F.3d 1249, 1256–57 (9th Cir. 2000). Despite the most vigorous and competent of efforts, success is never guaranteed. *McKittrick v. Gardner*, 378 F.2d 872, 875 (4th Cir. 1967). If counsel is not adequately compensated for the inherent risks, competent attorneys will be discouraged from prosecuting similar PAGA enforcement actions on behalf of aggrieved workers. *See Steiner v. BOC Financial Corp.*, 1980 WL 1446, at *3–4 (S.D.N.Y. 1980). Counsel's commitment of 269.3 hours to this matter also precluded work on other cases, further justifying the requested fee. Nathan Decl. ¶¶ 62-63, 74.

Counsel's fee request of $973,500.00 represents 33% of the $2,950,000 settlement fund, which falls squarely within the range courts routinely approve in California wage and hour and PAGA representative actions. One factor courts weigh is the result achieved. *Lealao*, 82 Cal.App.4th at 52. Here, counsel's efforts resulted in 10,315 PAGA aggrieved members receiving approximately $65.31 each on average—an excellent outcome given the number of pay periods at issue and the inherent uncertainties of PAGA litigation. Nathan Decl. ¶¶ 46-48. The requested fee is fair, reasonable, and should be approved.

7. <u>Benefits To Plaintiff, The Aggrieved Employees, and the LWDA.</u>

Lealao explained that when determining lodestar adjustments, courts should consider the need to encourage private enforcement necessary to vindicate many legal rights, as well as the role that representative actions play in relieving courts of the need to separately adjudicate numerous cases. *Lealao,* 82 Cal. App. 4th at 47. Courts iterate that statutory rights under the labor code implicate "important public policy." *Earley v. Superior Court*, 79 Cal. App. 4th 1420, 1430 (2000). *See also Crommie v. PUC*, 840 F. Supp. 719, 726 (ND Cal. July 26, 1994), aff'd sub nom, *Mangold v. PUC*, 67 F.3d 1470 (9th Cir. 1995) (the "public interest value of plaintiff's individual age discrimination actions" was used to augment fee award). *Thayer v. Wells Fargo Bank*, 92 Cal. App. 4th 819, 839 (2001), noted the important purposes fee-shifting statutes serve, cautioning courts not to be "unduly parsimonious" in calculating fees. *Thayer v. Wells Fargo Bank*, 92 Cal. App. 4th 819, 839 (2001).

8. Counsel's Continuing Responsibilities.

Counsel's continuing responsibilities to the Aggrieved Employees also warrant augmenting the lodestar. *See Thayer,* 92 Cal. App. 4th at 835 (counsel's ongoing obligations "deserve consideration" and "may justify increasing a lodestar"); *Wing v. Asarco Inc.,* 114 F.3d 986, 989 (9th Cir. 1997) (affirming multiplier enhancement based on counsel's continuing obligation to monitor distribution process).

C. The Court Should Approve The Request For Reimbursement Of Costs

As set forth in the declarations of Class Counsel, Plaintiff incurred $11,817.44 in costs, comprised of the following: court filing fees and costs ($464.94), expert and consultant fees ($3,852.50), and mediation fees ($7,500.00). The costs incurred were reasonable and necessary to achieve the settlement reached and do not include additional expenses incurred to file and serve the approval motions and to participate in the hearings. Nathan Decl. ¶ 78.

III. CONCLUSION

Plaintiff request that the Court grant the request for attorneys' fees in the amount of $973,500.00 and reimbursement of costs of $11,817.44, and approve the $10,000 PAGA Representative Enhancement award for Plaintiff.

Dated: June 1, 2026 **NATHAN & ASSOCIATES, APC**

By: /s/ Reuben D. Nathan
Reuben D. Nathan
Counsel for Plaintiff and on behalf of herself and all other aggrieved employees