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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JOSE DE JESUS CHIQUITO DIAZ DE LEON, individually, and on behalf of all others similarly situated, Plaintiff, v. PHILCAL, INC., dba FARMER BOYS VICTORVILLE, a California corporation; and DOES 1 through 10, inclusive, Defendants.	Case No.: CIVSB2317424 *[Assigned for all purposes to the Hon. David E. Driscoll, Dept. S22]* **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** <u>FINAL APPROVAL HEARING</u> Date: August 19, 2026 Time: 8:30 a.m. Dept.: S22 *[Filed concurrently with the Declarations of Karen L. Wallace and Garvin Brown; [Proposed] Order]* Complaint filed: July 28, 2023 FAC filed: February 7, 2024 Trial date: None set

TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 19, 2026, at 8:30 a.m. in Department S22 of San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415-0210, Jose De Jesus Chiquito Diaz De Leon ("Plaintiff") will, and hereby does, move for an order as follows:

1. Granting final approval of the proposed Settlement as memorialized in the Class Action and PAGA Settlement Agreement and Class Notice ("Agreement");
2. Appointing Tyler J. Woods, James Yoo, Heriberto Ponce, and Ruby Carrera of Wilshire Law Firm, PLC ("WLF") as class counsel ("Class Counsel") for settlement purposes;
3. Awarding Class Counsel attorneys' fees in the amount of $33,333.33 and reimbursement of litigation costs in the amount of $2,969.55;
4. Appointing Plaintiff as Class representative and approving a Class Representative Service Payment in the amount of $5,000;
5. Awarding Administration Expenses to ILYM Group, Inc. in the amount of $2,505.00;
6. Approving allocation of $4,000 as civil penalties under the Private Attorneys General Act ("PAGA"), Lab. Code § 2698, *et seq*., allocated 75% to the California Labor and Workforce Development Agency ("LWDA"), and 25% to Aggrieved Employees;
7. Directing that the clerk of the Court to enter the Court's order as a final judgment; and
8. Without affecting the finality of the final judgment, and pursuant to C.C.P. 664.6, reserving continuing jurisdiction over the Parties, Class Counsel, Defendant's counsel, and the Administrator for the purposes of implementing, enforcing and/or administering the Settlement or enforcing the terms of the judgment.

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This Motion will be based on the accompanying Memorandum of Points and Authorities, the Declarations of Karen L. Wallace and Garvin Brown and such oral argument as may be heard by the Court, and all other papers on file in this action.

Respectfully submitted,

Dated: July 27, 2026 **WILSHIRE LAW FIRM, PLC**

By: ____________________
Tyler Woods
James Yoo
Heriberto Ponce
Ruby Carrera
Karen L. Wallace

Attorneys for Plaintiff

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

FEDERAL CASES

TREATISES

OTHER SOURCES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jose De Jesus Chiquito Diaz De Leon ("Plaintiff") seeks final approval of the non-reversionary Class Action and PAGA Settlement ("Settlement") with Defendant PhilCal, Inc., dba Farmer Boys Victorville ("Defendant") (collectively, the "Parties"). The Settlement, memorialized in the Class Action and PAGA Settlement Agreement ("Agreement"), will provide substantial monetary payments to approximately 105 Class Members. *See* Declaration of Garvin Brown Regarding Notice and Settlement Administration ("Brown Decl.") ¶ 14.

The product of diligent efforts and adversarial, arm's length negotiations, the proposed Settlement is a great result for the Class. By resolving this matter now, Class Members will receive a guaranteed recovery without risk of nonpayment, delay, or an adverse judgment at trial. Upon the Court's approval of the Settlement, participating Class Members will receive an **average estimated Individual Class Payment of approximately $497.74**, with the highest of approximately $2,031.44 and the lowest of approximately $8.54. Brown Decl. ¶ 16. To date, there **no objections to the settlement** and **no request for exclusion**. *Id.* ¶¶ 11, 12. For the reasons set forth below, the Settlement is fair, reasonable, and adequate and is in the best interests of the Class.

Final approval of the Settlement is warranted as it satisfies all criteria for approval under California law. As demonstrated in the Motion for Preliminary Approval ("MPA"), the Settlement provides excellent benefits to the Class, particularly considering the complexities and risks of further litigation. Accordingly, Plaintiff respectfully requests that the Court grant final approval.

II. SUMMARY OF RELEVANT FACTS

A. Plaintiff's Claims

This is a wage and hour class and representative action, initiated on July 28, 2023, in the above-captioned-court by Plaintiff, on behalf of himself and a class of similarly situated employees who worked for Defendant Philcal, Inc., dba Farmer Boys Victorville ("Defendant") in California at any time from July 28, 2019, to June 30, 2024 (the "Class Period") as hourly-paid non-exempt employees ("Class Members"). Defendant is a subsidiary of United Airlines, Inc. and provides critical functions related to safety, security, customer service, operational efficiency and regulatory compliance. Declaration of Karen L. Wallace in support of the Motion ("Wallace Decl.") ¶ 3.

Plaintiff alleges that Defendant's uniform payroll, timekeeping, and wage and hour practices resulted in Labor Code violations, including that Defendant failed to pay for all hours worked, failed to provide employees with legally compliant meal and rest periods, and failed to reimburse business expenses. Based on these allegations, Plaintiff's complaint alleged against Defendant the following causes of action: 1) failure to pay minimum and straight time wages; 2) failure to pay overtime wages; 3) failure to provide meal periods; 4) failure to authorize and permit rest periods; 5) failure to timely pay final wages at termination; 6) failure to provide accurate itemized wage statements; 7) failure to indemnify employees for expenditures; and 8) unfair business practices in violation of the Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200, *et seq*. (the "Action"). Wallace Decl. ¶ 4.

On August 22, 2023, Plaintiff sent notice of Defendant's alleged Labor Code violations to Defendant and the California Labor & Workforce Development Agency ("LWDA"). *Id*. ¶ 5. Subsequently, on February 7, 2024, on behalf of himself and other "Aggrieved Employees," defined as Class Members who worked for Defendant in California as hourly-paid, non-exempt employees at any time from August 22, 2022, to June 30, 2024 (the "PAGA Period"), Plaintiff filed a First Amended Complaint in the Action ("FAC"), adding a PAGA cause of action and seeking civil penalties for the Labor Code violations alleged in the PAGA Notice. The FAC is the operative complaint in the Action ("Operative Complaint"). *Id*. ¶ 6.

B. Discovery, Investigation, and Negotiation

After initiating the Action, the Parties exchanged information, data, and documents. Defendant's production included Plaintiff's personnel file, a sampling of Class Members' time and pay records, copies of its policies and practices in effect during the Class Period, and information regarding the total number of current and former employees. The Parties have thus engaged in sufficient formal and informal discovery and investigation to assess the relative merits of the claims and contentions of the Parties. Wallace Decl. ¶ 7.

Furthermore, after reviewing and analyzing all available information, Class Counsel were able to evaluate the likelihood of class certification, success at trial on the merits, and Defendant's total maximum exposure in light of the applicable law regarding the claims and defenses asserted in the action. The extensive investigation, discovery, and analysis, including Class Counsel's damages model, allowed Class Counsel to act intelligently and effectively in negotiating the Settlement. *Id.* ¶ 8*; see also* Declaration of Tyler J. Woods in support of the MPA ("Class Counsel Decl.") ¶ 16.

C. Settlement Negotiations

The Parties' settlement negotiations were adversarial and arm's length, with both Parties willing to explore the potential for a settlement of the dispute but prepared to litigate their respective positions through trial and appeal if a settlement had not been reached. After extensive discussion regarding the strengths and weaknesses of Plaintiff's claims, Defendant's defenses, and the material Settlement terms, the Parties finalized the Agreement. Wallace Decl. ¶ 9, Ex. 1; *see also* Class Counsel Decl. ¶ 7, Ex. 1.

Class Counsel have thus conducted a thorough investigation into the facts underlying the Action. Based on the foregoing discovery and their independent investigation and evaluation, Class Counsel believe that the Settlement is fair, reasonable, and adequate and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses that could be asserted by Defendant, both to certification and on the merits, and the risks at trial and on appeal. Wallace Decl. ¶ 11; Class Counsel Decl. ¶ 15.

D. Preliminary Approval and Overwhelming Support for the Settlement

On March 24, 2026, the Court preliminarily approved the Settlement and the Agreement. The deadline for Class Members to opt out or object was June 30, 2026, and as of the time of filing no Class Member has opted out of or objected to the Settlement. The reaction of the Class to the Settlement has thus been overwhelmingly positive. Wallace Decl. ¶ 12; Brown Decl. ¶¶ 11, 12.

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E. Key Terms of the Proposed Settlement

Under the Settlement, Defendant will pay the Gross Settlement Amount of $100,000 to resolve all claims. (Agreement ¶¶ 1.22, 3.1.) Key settlement terms include:

1. "Administration Expenses Payment" means an amount not to exceed $6,250 to reimburse the Administrator's reasonable fees and expenses in accordance with its "not to exceed" bid submitted to the Court in connection with Preliminary Approval. (Agreement ¶¶ 1.3, 3.2.3.)

2. "Aggrieved Employee" means a person employed by Defendant in California and classified as an hourly-paid or non-exempt employee who worked for Defendant during the PAGA Period. (Agreement ¶¶ 1.4, 1.31.)

3. "Class" means all persons employed by Defendant in California and classified as hourly-paid or non-exempt employees who worked for Defendant during the Class Period. (Agreement ¶¶ 1.5, 1.12.) For purposes of this Settlement only, the Parties agree to certify the Class pursuant to California Code of Civil Procedure section 382.

4. "Class Counsel Fees Payment" means an amount of not more than 33 1/3% of the Gross Settlement Amount, which is currently estimated to be $33,333.33, to reimburse reasonable attorneys' fees incurred to prosecute the action. (Agreement ¶¶ 1.7, 3.2.2.)

5. "Class Counsel Litigation Expenses Payment" means an amount not to exceed $6,500, to reimburse reasonable attorneys' litigation costs incurred to prosecute the action. (Agreement ¶¶ 1.7, 3.2.2.)

6. "Class Period" means the period from July 28, 2019, through June 30, 2024. (Agreement ¶ 1.12.)

7. "Class Representative Service Payment" means an amount not to exceed $5,000 to the Class Representative for initiating the action and providing services in support of the action. (Agreement ¶¶ 1.14, 3.2.1.)

8. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b)

if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur." (Agreement ¶ 1.18.)

9. "Gross Settlement Amount" means $100.000.00, which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 of the Agreement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator's Expenses. (Agreement ¶¶ 1.22, 3.1- 3.2.5.2, 8.)

10. "Individual Class Payments" means Participating Class Members' pro rata shares of the Net Settlement Amount calculated according to the total number of Workweeks worked during the Class Period. (Agreement ¶¶ 1.23, 3.2.4.) Each Individual Class Payment will be allocated 20% to settlement of wage claims (the "Wage Portion") and 80% to settlement of claims for interest and penalties (the Non-Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. (Agreement ¶ 3.2.4.1.)

11. "Individual PAGA Payments" means Aggrieved Employees' pro rata shares of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period. (Agreement ¶¶ 1.24, 3.2.5.)

12. "LWDA PAGA Payment" means the 75% of the PAGA Penalties allocated to the LWDA, pursuant to Labor Code § 2699, subd. (i). (Agreement ¶¶ 1.27, 3.2.5.)

13. "Net Settlement Amount" means the amount remaining after the following payments have been made from the Gross Settlement Amount: PAGA Penalties, Class Counsel Fees and Litigation Expenses, Administration Expenses, and the Class Representative Service Payment. (Agreement ¶¶ 1.28, 3.2.4.)

14. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period. (Agreement ¶ 1.30.)

15. “PAGA Penalties” means the total amount of civil penalties to settle all PAGA claims, allocated 25% to Aggrieved Employees ($1,000) and 75% to the LWDA ($3,000.00). (Agreement ¶¶ 1.34, 3.2.5.)

16. “PAGA Period” means the period from August 22, 2022, through June 30, 2024. (Agreement ¶ 1.31.)

17. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (Agreement ¶ 1.35.)

18. “Released Parties” “means Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates. (Settlement ¶ 1.41.)

19. “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period. (Agreement ¶ 1.45.)

The Settlement also provides as follows:

1. Uncashed Checks: For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (not less than 180 days after the date of mailing), the Administrator shall transmit the funds represented by such checks to the California Controller’s Unclaimed Property Fund in the name of the Class Member. (Agreement ¶¶ 4.4.1, 4.4.3.)

2. Release by Participating Class Members: Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from any and all claims that were alleged, or reasonably could have been alleged, based on the Class Period and facts stated in the Operative Complaint, including, any and all claims involving any recovery of unpaid minimum wages and unpaid overtime (Cal. Lab. Code §§ 204, 1194, 1194.2, 1197, 1198), failure to provide

meal and rest periods (Cal. Lab. Code §§ 226.7, 512), failure to provide accurate wage statements (Cal. Lab. Code § 226), failure to pay all wages due at separation (Cal. Lab. Code §§ 201-203), failure to reimburse business expenses (Cal. Lab. Code § 2802), and violation of Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq*.). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (Agreement ¶¶ 5, 5.2.)

3. <u>Release by Aggrieved Employees</u>: Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Aggrieved Employees, regardless of whether they are Participating Class Members or Non-Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice that arose during the PAGA Period, including any and all claims involving any alleged failure to pay minimum wages or overtime, failure to provide meal and rest periods, failure to provide accurate wage statements, failure to pay all wages due at separation, and failure to reimburse business expenses, including Labor Code sections 201, 202, 203, 204, 210, , 226, 226.3,510, 1174.5, 1194, 1197, 1198, 2699, 2699.3, and 2802 during the PAGA Period. Aggrieved Employees only release these claims for the duration of the PAGA Period. ("Released PAGA Claims"). The foregoing release shall be binding on Plaintiff, the Aggrieved Employees, and the State of California, and shall bar by res judicata any claim under the PAGA brought by any person, including the Aggrieved Employees, on behalf of the State of California, as to any claims predicated on the Released PAGA Claims. (Agreement ¶¶ 5, 5.3.)

4. <u>Notice of Proposed Class Action Settlement</u>: The Class Notice set forth in plain terms a statement of the case, the terms of the Agreement, the approximate amount of the attorneys' fees, costs, and service award being sought, and an explanation of how the Settlement

allocations are calculated. Wallace Decl. ¶ 11; Brown Decl. ¶ 7, Ex. A. The Administrator mailed the Class Notice to Class Members by U.S First Class Mail on April 30, 2026. Brown Decl. ¶ 7. The Administrator undertook its best efforts to ensure that the Class Notice was provided to the current addresses of Class Members, including by conducting a national change of address search and re-mailing the Class Notice to updated addresses. *Id.* ¶ 6.

On balance, while Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action; the Settlement obviates the significant risk that the Court may deny certification of all or some of Plaintiff's claims, and Plaintiff recognizes that proving the amount of wages due to each Class Member would be expensive, time-consuming, and uncertain. Furthermore, even if Plaintiff certified all or even some of the claims, continued litigation would be expensive, involving a trial and possible appeals, resulting in substantial delay and reducing any potential recovery by the Class. Wallace Decl. ¶ 13.

On December 15, 2025, the Agreement was provided to the LWDA in advance of Plaintiff's filing of the Motion for Preliminary Approval of Class Action and PAGA Settlement. *Id.* ¶ 14, Ex. 2.

III. THE SETTLEMENT MERITS FINAL APPROVAL

The law favors the settlement of lawsuits, particularly in class actions and other complex cases. *See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81. A settlement is not judged against what the plaintiff might recover had he or she prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba v. Apple Computer, Inc.,* 91 Cal. App. 4th 224, 250 (2001), *disapproved of on other grounds by Hernandez v. Restoration Hardware, Inc.,* 4 Cal. 5th 260 (2018) ("Compromise is inherent and necessary in the settlement process. Thus, 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.") (internal quotations and citations omitted). Factors to be considered in evaluating a class action settlement include "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial…the experience and views of counsel…and the reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. Thus, the factual record must be sufficiently developed to withstand evaluation of the plaintiff's likelihood of success, considering "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Clark v. American Residential Services, LLC*, (2009) 175 Cal.App.4th 785, 799 (quoting *Kullar*, 168 Cal.App.4th at 130).

The trial court has broad discretion whether a class action settlement should be approved. (*Id.* at 234-35.) Nevertheless, "[d]ue regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. Accordingly, "[t]he inquiry must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id*. (internal quotations and citations omitted).

A. Plaintiff's Case and Risks of Further Litigation

Plaintiff and Class Counsel's investigation and discovery established both credible claims and viable defenses. Class Counsel Decl. ¶¶ 5-7. Thus, while he is confident in the merits of his claims, a legitimate controversy exists as to each cause of action, *supra*, and Plaintiff recognizes that, even if a class were certified based on all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class. Wallace Decl. ¶ 13; *see also* Class Counsel Decl. ¶ 15.

Under *Clark*, the most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement. *Clark,* 175 Cal.App.4th at 799. Here, Plaintiff has identified and provided a sufficient basis for bringing bona fide claims against Defendant, which could very well lead to a favorable judgment should litigation continue. However, the merits of Plaintiff's claims must be weighed against the inherent risks of litigation, the uncertainties involved in certifying a class, the burdens of proof necessary to establish liability at trial, and the probability of appeal from a favorable judgment. On balance, the Parties believe that the Gross

Settlement Amount is within the "ballpark" of reasonableness, and approval of the Settlement is appropriate. Wallace Decl. ¶ 15.

The proposed Settlement provides Class Members timely, guaranteed relief and avoids the risk of an unfavorable judgment. Indeed, the estimated highest gross payment is $2,031.44 and the lowest is $8.54, with an average gross payment of $497.74 to each Class Member. *Id*. ¶ 16; Brown Decl. ¶ 16. Given that continued litigation of this Action could result in a lower award than the Gross Settlement Amount (or no award at all), the Settlement and Individual Class Payments are reasonable.

B. A Presumption of Fairness Over the Settlement Exists

A presumption that a settlement is fair and reasonable exists where, as here, the following four factors are present: "(l) 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." *Wershba*, 91 Cal.App.4th at 245 (quoting *Dunk*, 48 Cal.App.4th at 1802).

Here, the Parties' settlement negotiations were adversarial and at arm's length; the Parties were willing to explore settlement of the Action but were also prepared to litigate their respective positions through trial and appeal if a settlement was not reasonable. As discussed above, Class Counsel conducted informal discovery regarding the claims and defenses at issue sufficient to allow Plaintiff and Class Counsel to act intelligently and effectively in negotiating the proposed Settlement. Wallace Decl. ¶¶ 8-11; Class Counsel Decl. ¶¶ 5-7. Class Counsel also have considerable experience and have demonstrated their competence at litigating wage and hour class actions, including their substantial experience in all facets of litigation in state and federal court, including discovery, law and motion, trial, appeals, arbitration and mediation. Class Counsel have litigated numerous class actions on behalf of plaintiffs and have been lead counsel or otherwise exercised significant case handling responsibilities in such cases, resulting in millions of dollars in class action settlements. Wallace Decl. ¶¶ 27-41; Class Counsel Decl. ¶¶ 39-54.

Based on their experience as employment and class action attorneys, Class Counsel are eminently qualified to evaluate the strengths of Plaintiff's claims, the strengths of Defendant's defenses, both against certification and on the merits, and the fairness of the Settlement. Their opinion that final approval of the Settlement would be in the best interests of Class Members in light of the significant risks of litigation is entitled to great weight. *See Kullar, supra,* 168 Cal.App.4th at 129 ("The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arms' length transaction entered without self-dealing or other potential misconduct.").

Finally, as of the time of filing, no Class Member has objected to or requested exclusion from the Settlement, and no Class Member has disputed the noticed workweek total. Brown Decl. ¶¶ 11-13; Wallace Decl. ¶ 12. The overwhelmingly positive response of the Class strongly supports final approval of the Settlement. *See, e.g., In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 (relatively few objections and requests for exclusion support approval). In fact, Courts have approved class action settlements in lesser circumstances. *See, e.g., Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S. Dist. LEXIS 5976, 2001 WL 34089697, *8 (finding that the "class members overwhelmingly support[ed] the settlement" where there were over 37,000 notices sent out, 2,745 class members participated in the settlement, "only nine objections were submitted", and there were 86 timely opt-outs and over 20 additional defective or untimely opt-outs, "these indicia of the approval of the class of the terms of the settlement support a finding of fairness under Rule 23") (citing *Hanlon v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1027 (despite vigorous objections and appeal by objectors, the "fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness," and the court did not abuse its discretion in approving settlement)).

Taken together, the facts give rise to a presumption that the Settlement is fair, adequate, and reasonable, and the Settlement should be approved.

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IV. CLASS COUNSEL FEES AND LITIGATION EXPENSES AND CLASS REPRESENTATIVE SERVICE PAYMENT ARE REASONABLE.

The Settlement provides, subject to the Court's approval, reimbursement for Class Counsel Fees and Class Counsel Litigation Expenses and a Class Representative Service Payment, which Defendant will not oppose so long as they do not exceed the agreed-upon amounts. Agreement ¶¶ 3.2.1, 3.2.2. No Class Member has objected to these requests, including the amounts requested. Brown Decl. ¶ 12.

A. Class Counsel Fees Payment Is Reasonable

According to a leading treatise on class actions, "[n]o general rule can be articulated on what is a reasonable percentage of a common fund. 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," with ***thirty to forty percent*** (30%-40%) commonly awarded in cases where the settlement is relatively small. *See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03; *see also Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 (stating that most cases where 30-50% was awarded involved "smaller" settlement funds of under $10 million).

Although California supports the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to "cross-check" or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.) In *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, the California Supreme Court affirmed an award of 33 1/3% of a $19 million wage and hour class action settlement with a 2.03 to 2.13 multiplier. *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506. As the Court explained, the lodestar cross-check "***does not override the trial court's primary determination of the fee as a percentage of the common fund*** and thus ***does not impose an absolute maximum or minimum on the potential fee award***." *Id*. at

505(emphasis added). Furthermore, "[i]f the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment. Courts using the percentage method have generally weighed the time counsel spent on the case as an important factor in choosing a reasonable percentage to apply." *Id.*; *see also Beaver v. Tarsadia Hotels* (S.D. Cal. Sept. 28, 2017) 2017 WL 4310707, at *9 (applying *Laffitte* standard to fee request for 33 1/3% of common fund).

Applying the lodestar method requires a two-step process. First, the number of hours reasonably expended are multiplied by a reasonable hourly rate. Second, a multiplier is applied to the lodestar to account for various mitigating factors. For example, "[t]he purpose of such 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." *Laffitte v. Robert Half Internat. Inc.,* 180 Cal. Rptr. 3d 136, 148, fn. 7 (Ct. App. 2014), *as modified* (Nov. 21, 2014), *review granted and opinion superseded sub nom. Laffitte v. Robert Half Int'l,* 342 P.3d 1232 (Cal. 2015), and *aff'd,* 1 Cal. 5th 480, 376 P.3d 672 (2016) (citation omitted). In addition, "[u]nder certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." *Consumer Priv. Cases*, 175 Cal. App. 4th at 557.

Detailed timesheets are **<u>not</u>** necessary for a lodestar cross-check: "The law is clear…that an award of attorney fees may be based on counsel's declarations, without production of detailed time records." *Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375; *see also United Steelworkers of America v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407 ("Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate.") Here, Class Counsel's concurrently filed declaration supports the lodestar for the Action.

Finally, as the California Supreme Court noted in *Laffitte* with respect to limited judicial resources, "trial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." *Laffitte,* 1 Cal.5th at 505 (internal quotations and citations omitted); *see also Barbosa v. Cargill Meat Solutions Corp.* (E.D.Cal.2013) 297 F.R.D. 431, 451 ("Where the lodestar method is used as a cross-check to the percentage method, it can be performed with a less exhaustive cataloguing and review of counsel's hours.").

The settled-for Class Counsel Fees Payment is consistent with the average fee award in class actions. Indeed, as is the case here, the custom and practice in class actions is to award ***approximately*** one-third of a fund as a fee award. *See 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.") Attorneys' fees in the amount of 33 and 1/3% of the Gross Settlement Amount fits squarely within the "approximate" custom and practice of awarding around one-third of a fund and is therefore reasonable.

Class Counsel's lodestar is more than $40,730.00 based on over 42.6 hours of work performed. Accordingly, this cross-check on the Class Counsel Fees Payment shows a negative multiplier of at least 1.22, and the requested amount is reasonable and fair. Wallace Decl. ¶¶ 18, 19. The calculation is important to note because when plaintiffs seek an amount in fees that is less than what they actually billed, the requested fee amount is generally considered reasonable. *Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F. Supp. 2d 848, 854 (finding that, if the court is asked to apply a negative multiplier, it "suggests the negotiated fee award is a reasonable and fair valuation of the services rendered to the class by Plaintiffs' Counsel."). Indeed, there is no reason for the Court to reduce Class Counsel's lodestar with a negative multiplier. *Roos v. Honeywell Int'l., Inc.* (2015) 241 Cal. App. 4th 1472, 1495, disapproved of on other grounds in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260 ("a trial court acts appropriately…when it accepts in a common-fund case a cap on fees…when the application of the cap results in a lower award than would be authorized under the lodestar method.").

Once the lodestar has been determined, the Court has discretion to adjust the fee award, taking into account other "enhancement" factors as appropriate. *See Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26, 39-45; *see also Serrano v. Priest* (1977) 20 Cal.3d 25, 49. In addition, it has been held that "[m]ultipliers can range from 2 to 4 or even higher." *Wershba*, *supra,* 91 Cal.App.4th at 255; *see also Van Vranken*, *supra,* 901 F. Supp. At p. 298 ("[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation.").

The overall reasonableness of Plaintiff's request is underscored by the fact that similar multipliers have been found to be reasonable for Class Counsel in other, similar class actions. *See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB, 2021 WL 3673845, *3 (finding WLF's multiplier of 2.57 reasonable "in light of the contingent nature of recovery, the complexity of the issues, and the result obtained"); *Chavez, supra,* 162 Cal.App.4th at p. 60 (applying a 2.5 multiplier on a lodestar cross-check); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 n.6 ("most" common fund cases apply a multiplier of 1.0-4.0); *Been v. O.K. Industries Inc.* (E.D. Okla. 2011) 2011 WL 4478766, *11 (citing a study "reporting [an] average multiplier of 3.89 in survey of 1,120 class action cases" and finding that a multiplier of 2.43 would be "per se reasonable.").

For example, the intermediate court in *Laffitte*, after finding that "2 to 4" is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier. *Laffitte,* 180 Cal. Rptr. 3d at 151. The opinion was affirmed in full by the California Supreme Court in its new decision guiding lower courts on assessing fees. *See Laffitte*, 1 Cal. 5th 480.

Factors determining whether a lodestar multiplier is appropriate generally include: 1) the risks presented by the contingent nature of the case; 2) the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly; 3) the nature of the opposition; 4) the preclusion of other employment by the attorney due to acceptance of the case; and 5) the result obtained and the importance of the lawsuit to the public. *Serrano, supra,* 20 Cal.3d at pp. 48-49. All these factors favor approval of a multiplier along the lines of those approved in the above-referenced cases.

The major consideration in assessing whether a multiplier is appropriate is the contingent nature of the award. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33. Furthermore, the possibility of *no* recovery is only one of the uncertainties inherent in taking on a case on contingency. Also uncertain are the amount that will be recovered, the cost of the litigation, both in effort and expenses, and how much time will pass before the recovery is obtained. *Id.* at 1132-1133, 1138.

Contingency fees should be higher than fees for the same legal services paid concurrently with the provision of the services. *Id.* "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." That rule is particularly appropriate where the case is brought to redress important rights of vulnerable persons. *Id*. A risk enhancement is "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 pay a premium for the risk of nonpayment or delay in payment of attorney's fees." *Id*. at 1138.

Here, Class Counsel has been the only counsel to represent the Class Members in this Action and have borne the entire risk and costs of litigating this Action purely on a contingency basis. Class Counsel's outlay of time and money in this case has been significant. Wallace Decl. ¶ 24. The other factors are also present here. As discussed, this Action considers complex questions of law and fact. Defendant's contentions compared to Plaintiff's claims underscore the risks of certifying a class and prevailing at trial, and either could have prevented recovery completely. *Id.* ¶ 11. Despite these risks, and despite the fact that Class Counsel's ability to litigate such cases is necessarily limited, Class Counsel took this case on a contingency basis. *Id.* ¶¶ 24, 25. As a direct result of litigating this Action, there were other meritorious cases presented to Class Counsel that would have generated substantial fees but were nonetheless declined during the pendency of the Action in order to devote the attention necessary to achieve this favorable result. *Id.* Considering the risks of continued litigation, the importance of the employment rights at issue, and a speedy recovery for the Class, the relief provided under the Settlement represents a very strong result for

Class Members.

Thus, the request for the Class Counsel Fees Payment is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards for similar cases in California. Accordingly, Plaintiff respectfully requests that the Court approve the requested Class Counsel Fees Payment.

B. <u>Class Counsel Litigation Expenses Payment Is Reasonable.</u>

As of the time of filing, WLF has incurred $2,899.14 in costs, and Defendant will not oppose the request for reimbursement. request. Accordingly, Class Counsel respectfully requests a Class Counsel Litigation Expenses Payment in the amount of $2,899.14 for reasonably incurred expenses. The categories of costs, set forth in the accompanying Wallace Declaration, are both reasonable and necessary. Wallace Decl. ¶ 26, Ex. 3.

Counsel can recover "out-of-pocket expenses that 'would normally be charged to a fee-paying client'" including costs for "service of summons and complaint, service of trial subpoenas, fee for defense expert at deposition, postage, investigator, copying costs, hotel bills, meals, messenger service and employment record reproduction." *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19. Such costs are properly recoverable on motions for settlement approval. *See Nunez v. BAE Sys. San Diego Ship Repair Inc.* (S.D. Cal. 2017) 292 F. Supp. 3d 1018, 1057; *Rutti v. Lojack Corp.* (C.D. Cal. July 31, 2012) No. CV 06–00350 DOC, 2012 WL 3151077, at *12 ("Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents scanning, and visual equipment are typically recoverable.").

Therefore, the requested Class Counsel Litigation Expenses Payment should be approved.

C. <u>Class Representatives' Service Payments Are Reasonable.</u>

"Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit." *Clark*, 175 Cal.App.4th at 804; *see also Cellphone Term. Fee Cases* (2010) 186 Cal.App.4th 1380, 1394 (*quoting Clark*, 175 Cal.App.4th at 804). Accordingly, "the rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." *Clark*, 175 Cal.App.4th at 806. The "criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *Cellphone Term. Fee Cases*, 186 Cal.App.4th at 1394–95.

Named plaintiffs in class action lawsuits are thus "eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412. Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. *See Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958-59. The California Supreme Court has also noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. *Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61. Plaintiffs should therefore be rewarded for assuming the risk of retaliation for the sake of class members. *See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.

The Settlement provides that Plaintiff may request a Class Representative Service Payment in an amount not to exceed $5,000.00, subject to the Court's approval, which Defendant will not oppose. (Agreement ¶ 3.2.1.) The Class Representative Service Payment to Plaintiff is an enhancement award, acknowledging his service to the Class as the class representative, including Plaintiff's general release of all individual claims against Defendant, which is broader than the release binding other Participating Class Members. (Agreement ¶¶ 5.1, 5.1.1.) Plaintiff submitted a declaration in support of Preliminary Approval that describes how each of the five factors enumerated above are present here, including his efforts assisting Class Counsel in the Action, communicating with Class Counsel regarding the litigation, and reviewing case-related documents. *See generally,* Plaintiff's Declaration, filed March 24, 2026. Class Counsel reiterates that, throughout the Action, Plaintiff, a former employee of Defendant, has cooperated with WLF and taken time to protect the interests of the Class. Plaintiff provided valuable information regarding the off-the-clock, meal period, and rest period claims, informed WLF of developments and information relevant to the Action, participated in decisions concerning the litigation, and made himself available to answer questions during settlement negotiations. Before we filed this Action, Plaintiff provided my office with documents regarding the claims alleged in the Operative Complaint and the PAGA Notice. The information and documentation Plaintiff provided was instrumental in establishing the Labor Code violations alleged in the Action, and the recovery for which the Settlement provides would have been impossible to obtain without him. Wallace Decl. ¶ 42.

Compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. For example, a 2006 study examined the average incentives or enhancements awarded to class action plaintiffs from 1993 to 2002, concluding that the "average award per class representative was $15,992 and the median award per class representative was $4,357." Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study", 53 UCLA L. Rev. 1303, 1308 (2006). Indeed, courts routinely approve $10,000 enhancement awards for plaintiffs represented by class counsel. *See, e.g., Moreno, supra,* 2021 WL 3673845 at *3 ("The Court concludes a $10,000 incentive award is appropriate."); *Suarez v. Bank of Am., Nat'l Ass'n,* No. 18-CV-01202-LB, 2024 WL 150721, at *4 (N.D. Cal. Jan. 11, 2024) ("The court approves awards of $10,000 for each class representative."). Accordingly, Plaintiff respectfully requests that the Court finally approve the request for the Class Representative Service Payment.

D. <u>The Administration Expenses Payment Is Reasonable.</u>

The Administrator estimates that it will incur a total of $2,505.00 in costs associated with the administration of this Settlement. Brown Decl. ¶ 18. These expenses are reasonable, based upon the size of the Class, claim and exclusion tracking, and Class Member payment processing.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the proposed Settlement.

Respectfully submitted,

Dated: July 27, 2026

WILSHIRE LAW FIRM, PLC

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