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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MADERA

CHARLES LAIZURE and BENJAMIN BRAVO, individually, and on behalf of other members of the general public similarly situated, Plaintiffs v. ALLWIRE, INC., a California Corporation; and DOES 1-10, inclusive Defendants	CASE NO. MCV087990 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S *UNOPPOSED* MOTION FOR FINAL APPROVAL OF (1) CLASS ACTION SETTLEMENT; (2) ATTORNEYS' FEES AND COSTS; and (3) CLASS REPRESENTATIVE AWARDS** Date: November 4, 2025 Time: 8:30 a.m. Judge: Hon. Michael Jurkovich Dept.: 411b

I. SUMMARY OF MOTION

This motion seeks final approval of a "Wage and Hour" representative (*i.e.*, "PAGA") and Class Action settlement. Plaintiffs CHARLES LAIZURE and BENJAMIN BRAVO, individually, and on behalf of other members of the general public similarly situated ("Plaintiffs") claims on behalf of a class of nonexempt employees who worked for the named Defendant, ALLWIRE, INC., during the operative class period, set forth herein.

Following approximately 16 months of formal litigation, exchanges of formal and informal discovery, a full-day of Mediation, and extensive arm's length negotiations, the parties agreed to the terms of a class and PAGA action settlement. Following the distribution of the approved Notice to the class, the proposed final settlement figures are as follows:

Final size of potential class:	**67 Participating Class Members**
Objections to Settlement:	**Zero (0)**
Opt-Outs:	**Zero (0)**
Gross settlement amount ("GSA"):	**$325,000.00**
Claims administration:	**$3,973.85**
Costs/expenses of litigation:	**$3,973.85**
LWDA payment:	**$30,000.00** (75 % Share of $40,000 allocation)
Attorneys' fees:	**$108,333.00** (1/3 of total)
Class representative incentives:	**$10,000.00** ($5,000.00 to each Plaintiff)

Please Note: The declaration of Settlement Administrator Jeffery Johnson is accurate as of October 15, 2025. However, the Class Notice Period does not expire until October 17, 2025. The parties did not wish to delay getting this motion to the Court. However, Plaintiffs' Counsel will be submitting a supplemental declaration from Settlement Administrator Jeffery Johnson once the Class Notice Period officially ends.

There have been **no (zero) objections** to this proposed settlement. The *average* gross payment to each participating Class Member based on the above figures is $2,204.38, which does not account for the fact that certain class members will receive more or less than an "average" share, depending on the length of time each worked for Defendants during the class period. (Please see the declaration of Settlement Administrator Jeffrey Johnson at ¶15).

II. UPDATED FACTUAL AND PROCEDURAL HISTORY

Should the Court deem it relevant, a much more detailed procedural history of the case, and summary of all claims, was already set forth in Plaintiff's original Motion for Preliminary Approval. (ROA #25). The Court **granted** Preliminary Approval of the parties' original settlement on July 29, 2025. (ROA #32). The signed preliminary approval order was entered August 11, 2025. (ROA # 33).

As was detailed more fully in the prior motion, after a year and four months of active litigation, the parties attended a highly adversarial mediation, presided over by a well respected "Wage and Hour" mediator (Chris Barnes, Esq.). (ROA #25, § II). The case did not settle that day. Subsequent to the Mediation, the parties eventually accepted a mediator's proposal and reached a Settlement. As of May 12, 2025, the parties agreed on all final terms of the settlement which was memorialized in the Agreement, which is attached to the declaration of Eric K. Yaeckel as **Exhibit A**. (Yaeckel Decl. ¶9).

Most importantly for purposes of final approval, **zero** employees (out of **67 individuals)** objected, and zero employees have "opted out." (Johnson decl. ¶¶ 10-11). Thus, the class overwhelmingly supports the proposed settlement.

The parties' Joint Stipulation of Class and PAGA Action Settlement and Release (hereinafter the "Agreement") contains the terms of the class action settlement and is already on file with the Court. (ROA #28: **Exhibit A** thereto). For ease of reference, the Agreement will be cited to herein again as Agreement or Exhibit A)[1].

III. SETTLEMENT TERMS

The Agreement includes the following key terms:

1. Contingent Nature of the Settlement

This Agreement is contingent upon final approval by the Court. If for any reason the Settlement does not become final, the Parties will be returned to their positions with respect to the Action as if the Agreement had not been entered into. (**Ex. A** at ¶64).

[1] This Memorandum incorporates by reference the definitions in the Agreement and the terms used herein are intended to have the same meaning as set forth in the Agreement.

2. Description of the Settlement Classes

Solely for the purposes of the Agreement, the parties have agreed that the term "Class Member" is defined as:

> means all persons who worked for Defendant as non-exempt, hourly employees in the State of California at any time during the Class Period.(**Exhibit A** at ¶5).

The Class Period is the period from November 8, 2018 through February 28, 2025. (**Exhibit A** at ¶7). All Class members are also part of the PAGA settlement, as "PAGA Members" are defined as:

> means all persons who worked for Defendant as non-exempt, hourly employees in the State of California at any time during the PAGA Period. (**Exhibit A** at ¶17).

The PAGA Period is defined as the period from September 4, 2021 through February 28, 2025, (**Exhibit A** at ¶18). Class Notices were sent to 67 individuals, as determined by Defendants' employment records. (Johnson decl. ¶ 6(a)). **No** (**zero**) Class Members opted out of the litigation. (Johnson decl. ¶ 10). **No** (**zero**) Class Members have objected to the proposed settlement. (Johnson decl. ¶11). Following the Notice, there are a total of 67 class members who will all receive a share of the settlement proceeds. (Johnson decl. ¶ 12).

3. Appointment of Settlement Claims Administrator

CAC Services Group, LLC was used as the "Settlem ent Administrator" for purposes of providing the Notice (and its instructions) to Settlement Class Members, issuing all payments pursuant to the Agreement, and to track all opt-outs and objections to the settlement.

As detailed in the accompanying declaration, CAC successfully completed all steps of the Notice process and is prepared to distribute payments pursuant to this Court's Final Orders. (See Johnson decl. generally).

4. Scope of the Release

For purposes of the Agreement, Class Members release all claims, rights, demands, liabilities, and causes of action that are alleged in the operative Complaint, or which could have been alleged by reason of, or in connection with, any matter or fact set forth or referred to in the operative Complaint during the Class Period and all claims for civil penalties under California Labor Code §§

2698, et seq., that were brought or could reasonably have been brought based on the same facts alleged in Plaintiffs' LWDA letter during the PAGA Period. **Exhibit A** at ¶¶ 24-25.

5. Cash Payment and Allocation

The Agreement provides for an automatic Individual Settlement Payment to the members of the Class. No claims need be submitted. Class Members will be entitled to an average share of approximately $2,204.38. (Johnson decl. ¶ 10). The actual amounts received vary based on length of employment during the class period. The highest estimated payout is $6,638.12 and the lowest amount is $20.18. (Johnson decl. ¶ 15).

The settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than one hundred eight (180) calendar days after issuance will be tendered to the State Controller's Office, Unclaimed Property Division in the name of each Class Member who did not negotiate his or her check. (**Ex. A** at ¶57). The Parties agree this disposition results in no "unpaid residue" under California Civil Procedure Code § 384(b), as the entire NSF shall be paid to Participating Class Members, whether or not their Individual Settlement Payment checks are cashed.

6. Contingent Costs

The Agreement provides for One Hundred Eight Thousand and Three Hundred Thirty-Three Dollars and Zero Cents (**$108,333.00**) in Attorneys' Fees, which is one-third (1/3) of the total Settlement, and up to Fifteen Thousand Dollars and Zero Cents ($15,000.00) in litigation costs. (*See* **Exhibit A** at ¶33). The actual costs between the Plaintiffs' totals **$11,851.59**. (Yaeckel decl. ¶29 ; Perez decl. ¶ 18).

For costs incurred in administrating the Settlement, the Agreement provides for an estimated Three Thousand Nine Hundred Seventy-Three Dollars and Eighty-Five Cents ($3,973.85), or less. (*See* **Exhibit A** at ¶35). Defendants will pay the actual costs, quoted at **$3,973.85,** out of the settlement amount to the Settlement Administrator. (Johnson decl. ¶ 17).

Defendants also agree to allocate Forty Thousand Dollars (**$40,000.00**) to be allocated for Plaintiff's PAGA claims with 75% of the amount, or Thirty Thousand Dollars ($30,000.00) being paid to the LWDA, and 25%, or $10,000.00, being distributed amongst the PAGA Members. (*See* **Exhibit A** at ¶36).

Defendant also agrees to pay to Plaintiffs Benjamin Bravo and Charles Laizure Five Thousand Dollars and Zero Cents (**$5,000.00**) each, which represents a Class Representative Enhancement Payment in consideration for their services as Class Representatives. (*See* **Exhibit A** at ¶34; and the Court's preliminary approval order). The class was notified of the payments to Plaintiffs and did not object. (See Johnson decl. and Ex. 1 thereto). The enhancement awards were decided pursuant to good faith negotiations and is intended to recognize that it was the class representatives who initiated the lawsuit, initiated the PAGA claims, provided critical documents and witnesses to his attorneys, and worked with their attorneys to propound and prepare written discovery, all in an effort to obtain moneys allegedly owed not only to themselves, but to all other employees. For further justification of the enhancements, please see the attached declarations of Mr. Bravo and Mr. Laizure.

IV. CONTROLLING LAW

The following facts and law support this undisputed request.

A. FINAL APPROVAL OF CLASS ACTION SETTLEMENTS

The trial court has broad discretion to determine whether a class action settlement is fair and reasonable. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.

Fairness is presumed where **(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. *Chaves v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 52; *Dunk v. Ford Motor Co.*,(1996) 48 Cal.App.4th 1794, 1802. But, even where it appears the settlement is fair, the court must still determine whether the settlement should be approved after considering "the strengths and weaknesses of the claims and risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 129. It considers: (i) the strength of the plaintiff's case; (ii) the risks, expense, complexity and likely duration of further litigation; (iii) the risk of maintaining class action status throughout the trial; (iv) the amount offered in settlement; (v) the extent of discovery completed; (vi) the stage of the proceedings; (vii) the experience and views of counsel; (viii) the presence of a governmental participant; and (ix) any reaction of putative class members. *Dunk*, *supra*, 48 Cal.App.4th, at 1800-1801; *In re Microsoft*, *supra*, 135 Cal.App.4th, at 723.

The court should approve a class action settlement when the settlement is fair and falls "within the range of reasonableness." *Hernandez v. Vitamin Shoppe*, (2009) 174 Cal.App.4th 1441, 1446.

B. ATTORNEYS' FEES

The California Supreme Court has recently determined that the percentage of the benefit ("percentage method") is proper for determining a reasonable attorney fee award in an employment class action case. *Laffitte v. Robert Half Intern. Inc*. (2016) 1 Cal.5th 480.

The California Supreme Court's rationale was as follows:

> we clarify today that use of the percentage method to calculate a fee in a common fund case, where the award serves to spread the attorney fee among all the beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. 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 (See pt. I, ante; *Lealao, supra*, 82 Cal.App.4th at pp. 48–49, 97 Cal.Rptr.2d 797; *Rawlings v. Prudential–Bache Properties, Inc., supra*, 9 F.3d at p. 516)**—convince us the percentage method is a valuable tool that should not be denied our trial courts**. *Laffitte v. Robert Half Intern. Inc*. (2016) 1 Cal.5th 480, 503 (emphasis added).

The Court also determined that while permissible, a lode-star "cross check" of the percentage method was **<u>not</u>** required of California's trial courts. *Id.* at 506.

In fact the *Laffitte* Court further noted how advocating a lodestar, over a percentage of the recovery, creates perverse litigation incentives:

> Critics of the lodestar method note, for example, the difficulty in applying the method and cite the **undesirable incentives created by that approach**—i.e., a financial **incentive to <u>extend</u> the litigation so that the attorneys can accrue additional hours** (and thus, additional fees). Moreover, some courts and commentators have criticized the lodestar method because **it gives counsel less of an incentive to maximize the recovery** for the class.

Id. at 494 (emphasis added).

Finally, "regardless whether the percentage method or the lodestar method is used, **fee awards in class actions average around one-third of the recovery**." *Chavez v. Netflix, Inc.*, (2008) 162

Cal.App.4th 43, 66, n.11 (2008); See e.g., *In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 463 (upholding award of 33.3 percent of the settlement fund).

In considering the reasonableness of the fees requested under the percentage method, California courts may also consider the following factors: **(1)** the results achieved on behalf of the Class; **(2)** the response of the Class to the settlement, including a lack of objections to the settlement terms, and particularly to the fee award; **(3)** counsel's preclusion from taking other work and the contingent nature of the fee award; and **(4)** counsel's experience, reputation, and ability. *See Laffitte*, 1 Cal. 5th at 504-05 (holding that the court may consider various factors in determining the reasonableness of the fees); see also, *Ketchum v. Moses*, (2001) 24 Cal. 4th 1122, 1132 (applying these factors in considering a fee award under the lodestar-multiplier method).

C. CLASS REPRESENTATIVE ENHANCEMENTS

An incentive award may be appropriate to induce someone to serve as a class representative.

In determining whether to make an incentive award, the court may consider (1) the risk, both financial and otherwise, the class representative faced in bringing the suit; (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 received by the class representative as a result of the litigation. *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1270 citing *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395.

Additional factors to consider include:

> "'the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.' Federal district courts have identified other factors as well, including 'the risk to the class representative in commencing suit, both financial and otherwise,' 'the notoriety and personal difficulties encountered by the class representative," the duration of the litigation, and 'the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.'"

Clark v. Am. Residential Servs. LLC (2009) 175 Cal.App.4th 785, 804.

V. <u>ARGUMENT</u>

A. THE PROPOSED SETTLEMENT IS MADE IN GOOD FAITH

As specifically set forth below, the settlement meets all requirements for Court approval.

1. <u>Strength of Plaintiffs' Case and Investigation and Discovery</u>

The most important factor courts consider when evaluating the fairness of the class action settlement is the strength of the plaintiff's case balanced against the amount offered in settlement. *Kullar, supra*, 168 Cal.App.4th at 130.

This is a class and representative action, with Plaintiffs' claims premised on Labor Code violations, established (in part) from Defendant's uniform policies. *Brinker Rest. v. Superior Court*, (2012) 53 Cal. 4th 1004, 1051 (holding that, where a company's uniform policy prohibits off-the-clock work, certification of claims for such off-the-clock work is inappropriate, especially where the court is merely "presented with anecdotal evidence of a handful of individual instances in which employees worked off the clock.") Thus, Plaintiffs' counsels' approach was to investigate Defendant's uniform employment policies by, *inter alia*, scrutinizing putative class members' time and wage records, as well as Defendant's written meal and rest period policies.

As detailed more thoroughly in the preliminary approval motion, discovery occurred, followed by additional extensive informal exchanges prior to mediation. (See ROA # 25 at § VI.F).

Defendants produced <u>verified</u> copies to Plaintiff of the following: a sampling of time and payroll records for the aggrieved employees, data points for the aggrieved employees, relevant policy and other documents pertaining to Defendant's wage and hour policies, and Plaintiffs' personnel records, time records, payroll records, and wage statements. Counsel reviewed hundreds of pages of electronic documents. Through this review, Plaintiff's counsel was able to analyze and verify the following: the uniformity of Defendant's "timekeeping" and compensation practices and the average net effect it had on Defendant's nonexempt employees; the format and content of Defendant's itemized wage statements; the average rate of pay for Defendant's nonexempt employees; and the average number of apparent meal period violations per employee based on multiple sets of timekeeping data. (Yaeckel Decl.¶11).

From this data, a detailed valuation of all claims was performed, and was presented to this Court at the preliminary approval stage. (See ROA # 25 at § IV, and the declaration of Eric K. Yaeckel in Support of Preliminary Approval).

While Plaintiffs maintained the claims were all viable, Plaintiffs (and counsel) recognize there were substantial risks to proceeding on behalf of a class and representative group. Defendant presented several potentially valid defenses to certification, liability and mitigation of damages. (Yaeckel Decl.¶11).

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

Plaintiffs' Counsel's effectiveness in prosecuting this case has translated into tangible monetary benefits for the Settlement Class Members in the following respects: **(a)** a guaranteed favorable result; **(b)** guaranteed monetary recovery over a reasonably short period of time, as opposed to possibly waiting additional years for a potentially worse result; and **(c)** significant savings in attorney's fees and costs, which would have greatly increased had the case progressed through trial and possible appeals.

Given the existence of viable defenses, for the vast majority of the class claims, it was unlikely that all class claims would have been certified and brought to trial. Therefore, this class action settlement is a superior result for both parties. In exchange for a full release, Class members are able to recover substantial monetary amounts *now*. Defendant is also able to "buy its peace," and avoid the costs of defending all future claims stemming from the same wage and hour issues in this case.

Regarding Plaintiffs' PAGA representative claims, there is also a substantial risk that Plaintiffs would either fail to obtain a favorable judgment on one or more of these claims, or that a favorable award on one or more PAGA claims can be reduced. *See Thurman v. Bayshore Transit Mgmt., Inc.*, (2012) 203 Cal.App.4th 1112, 1135 (holding the Superior Court may "mitigate" PAGA penalties, even after a finding of liability.)

3. The Experience and Views of Counsel

Class Counsel has considerable experience in wage and hour and class action litigation. Mr. Eric Yaeckel has over 14 years of experience as an attorney who is primarily engaged in prosecuting class and representative actions. Mr. Yaeckel is one of the attorneys of record in a matter very recently (and favorably) decided before the California Supreme Court titled *Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021). The *Donohue* matter is a certified class and PAGA action. Mr. Yaeckel also has specific trial experience in several PAGA representative action matters. (Yaeckel decl. ¶ 4-8).

Mr. Ryan Kuhn has over 6 years of experience as an attorney who is primarily engaged in prosecuting class and representative actions. He has been the "lead associate" on numerous class action cases that settled in the high "seven figure" and "eight figure" range. (Yaeckel decl. ¶ 4).

Co-counsel Capstone Law have a long history of successfully prosecuting wage and hour Class and Representative Actions. (Perez decl. ¶ 5-13). His firm has handled numerous large and extensively litigated class action cases, and has repeatedly been found "adequate" to act as class counsel by numerous California State and District Courts. (*Id.*).

Based on a detailed analysis of all the claims and the risks involved in continuing litigation, class counsel submits the **$325,000.00**Gross Settlement Fund represented a fair, and more than reasonable, settlement. (Yaeckel decl. ¶9).

4. <u>Presence of a Governmental Actor</u>

Although the State is not directly involved in this action, Plaintiffs "stand in the shoes" of the Labor and Workforce Development Agency ("LWDA") by bringing a PAGA action. Consideration has been made to compensate to Labor Workforce Development Agency ("LWDA") in the amount of $30,000.00 (which is the LWDA's 75% share of a $40,000 allocation).

The LWDA was notified and declined to prosecute the claims itself. Counsel for the parties believe this is a fair, reasonable, and adequate allocation. (Yaeckel decl. ¶¶ 12, 14). The LWDA was also served with copies of the Settlement and Preliminary Approval Motion and has not objected or responded to date. (*Id.*) They have also been served with notice of this motion and all supporting documents. (See concurrently filed Proof of Service). Counsel will submit a declaration updating the Court should the LWDA provide any response.

5. <u>Reaction of the Class Members to the Proposed Settlement</u>

A total of 67 members of the settlement class were notified and zero members requested exclusion and opted out of the class.(Johnson decl. ¶¶ 6, 10, 11).

Perhaps most importantly, **there have been <u>No</u> (Zero) objections to the terms of the proposed settlement**. (Johnson decl. ¶ 12).

"By any standard, the lack of objection of the Class Members favors approval of the Settlement." *In re Omnivision Technologies, Inc.*, (N.D. Cal. 2008) 559 F.Supp.2d 1036,1043; see also *Ross v. A.H. Robins*, (S.D.N.Y. 1988) 700 F. Supp. 682, 684 ["The absence of objectants may itself be taken as evidencing the fairness of a settlement."]

B. THE REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE

Plaintiffs will seek, and Defendants will not oppose, a payment of One Hundred Thousand Three Hundred Thirty-Three Dollars and Zero Cents (**$108,333.00**) in Attorneys' Fees, which is one-third (1/3%) of the total Settlement.

The agreement also calls for up to Fifteen Thousand Dollars ($15,000.00) in litigation costs. However, Plaintiffs will be seeking less in the total amount of **$11,851.59**. (Yaeckel decl. ¶29 ; Perez decl. ¶ 18).

As set forth below, the requested attorney's fees are inherently reasonable, on the basis of both a percentage of the recovery and a lodestar method, given the results obtained for the class. The following factors establish the reasonableness of the attorney's fees requested.

1. The Contingent Nature of the Fee Agreement, and Inherent Risk Therein, Supports Awarding a *Percentage of the Recovery*

In the instant matter, Plaintiffs' Counsel was retained on a contingency basis. (Yaeckel decl. ¶15). As part of the Agreement, Counsel was required to continue the prosecution of the matter regardless of the outcome of the preliminary motions (*i.e.*, class certification.) (*Id.*) Here, however, Plaintiffs' Counsel has agreed to a 33 & 1/3 % share of the recovery in order to maximize the recovery on behalf of the class. (*Id.*)

There is an **established practice** in the private legal market to reward attorneys for taking the risk of non-payment by paying them a **premium over their normal hourly rates** for winning contingency cases. *In re Washington Public Power Supply System Securities Litigation* (9th Cir. 1994) 19 F.3d 1291, 1299. If attorneys' efforts create a benefit for others in addition to their own client, the court is empowered to award fees from that fund. *Boeing v. Van Gemert* (1980) 444 U.S. 472, 478.

The rationale for fee enhancement in contingency cases has been explained as follows:

> 'A contingent fee must be higher than a fee for the same legal services paid as they are performed. **The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans**.' (Prosner, Economic Analysis of Law (4th ed.1992) pp. 534, 567.) '**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**.' (Leubsdorf, The Contingency Factor in Attorney Fee Awards (1981) 90 Yale L.J. 473, 480; see also Rules Prof. Conduct, rule 4-200(B)(9) [recognizing the contingent nature of attorney representation is an appropriate component in considering whether a fee is reasonable]; ABA Model Code Prof. Responsibility, DR 2-106(B)(8) [same]; ABA Model Rules Prof. Conduct, rule 1.5(a)(8). [] **Such fee enhancements are intended to compensate for the risk of loss generally in contingency cases as a class**.

Beasley v. Wells Fargo Bank (1991) 235 Cal.App.3d 1407, 1419 (disapproved on other grounds.)

The percentage of the fund approach also sets expectations and incentivizes counsel in taking on the risk of a contingency case:

> The bases of the equitable rule which permits surcharging a common fund with the expenses of its protection or recovery, including counsel fees, appear to be these: fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; **encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be promptly and directly compensated should his efforts be successful**.

Jordan v. California Dep't of Motor Vehicles (2002) 100 Cal.App.4th 431, 446 (with emphasis added) citing *Estate of Stauffer* (1959) 53 Cal.2d 124, 132.)

As a result, the percentage of the recovery (routinely approved in California at 33 & 1/3%), properly incentivizes and awards counsel for diligently pursuing this matter in the face of numerous obstacles to both certification, and liability.

2. <u>The Continuing Obligation to Devote Time and Effort to the Litigation</u>

Since the tentative agreement, my office has had to devote time to maintain the litigation, achieve Court approval for the proposed settlement, and assist the proposed Class Members with questions about the Class Notice, Potential Release and all available options. Moreover, based on my experience acting as class counsel, I also estimate at least another 5.0 hours by my office will be devoted assisting Class Members on questions and issues regarding the settlement, meeting with Class Members (including on any late submissions), and preparing for and attending the Final Approval hearing in this matter. (Yaeckel decl. ¶16).

3. <u>The Extent to which the Litigation Precluded Other Employment</u>

Counsel was precluded from accepting other employment and clients due to the necessity of maintaining the prosecution of the instant matter and also precluded them from bringing clients to the firm. (Yaeckel decl. ¶ 17).

4. <u>The Experience, Reputation, and Ability of the Attorneys who Performed the Services, and the Skill They Displayed in Litigation</u>

As set forth above, Plaintiffs' counsel all have extensive experience, successfully prosecuting class and representative actions. (Yaeckel decl. ¶ 4-8; Perez decl. ¶¶ 5-13). Bravo's and Laizure's counsel are the attorneys of record in a matter very recently (and favorably) decided before the

California Supreme Court titled *Donohue v. AMN Services, LLC*, (2021) 11 Cal.5th 58. The *Donohue* matter is a certified class and PAGA action. (Yaeckel decl. ¶ 5). Plaintiffs' counsel are currently lead counsel on approximately 30 employment "wage and hour" claims with class action, or representative action allegations. (Yaeckel decl. ¶6).

Plaintiffs' counsel has recent (and successful) Trial experience in "Wage and Hour" cases. In a recent successful PAGA trial, before the Hon. Katherine Bacal of the San Diego Superior Court, Plaintiff's counsel was awarded their full requested attorneys fees and the hourly rates (which are similar to the fees/rates billed here) billed were all approved. See *Carrington v. Starbucks Corp.* San Diego Superior Court, Case No. 37-2014-00018637-CU-OE-CTL and published appellate opinion at 30 Cal.App.5th 504. (Yaeckel decl. ¶7).

Based on said experience, it is the opinion of counsel that this settlement represents a fair and adequate payment. (Yaeckel decl. ¶9),

5. The Amount Involved and the Results Obtained on Behalf of the Class

This is not a "coupon" class action case. (Yaeckel decl. ¶18). The Class is set to receive significant monetary benefits they would not have received if Class Counsel did not act. (*Id.*) Participating members of the Class will receive an average of $2,204.38, with some class members receiving as much as $6,638.12. (Johnson decl. ¶ 15).

6. A Percentage of the Common Fund Award is Proper

The controlling law on this issue is set forth above in Section IV(B).

Plaintiff's counsel submits that the request for 33 & 1/3 % in attorneys fees from the "common fund" settlement is proper. *Laffitte v. Robert Half Intern. Inc*., (2016) 1 Cal.5th 480, 503, 506. Historically, courts have awarded fees as high as fifty percent (50%) of the common fund, depending on the circumstances of the case. *Newberg,* § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp.494 (awarding attorneys' fees in the amount of 45% of the $7.3 million settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement fund as attorney fees).

California Courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions).

Additionally, a common fund award is not dependent on a determination of the actual amount claimed out of the fund by those entitled-it is the creation of the fund that is the crucial fact. In *Winslow v. Harold G. Ferguson Corp.,* the California Supreme Court expressly held that "it is equitable that [the attorney's] compensation and expenses should come from the entire fund saved for all classes concerned before it is distributed." *Winslow v. Harold G. Ferguson Corp.* (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly recognizes that "in a traditional common fund case, [a percentage-based fee] may be calculated on the basis of the total fund made available rather than the actual payments made to the class." *Lealao, supra,* 82 Cal.App.4th at p. 51; *see also Boeing, supra,* 444 U.S. at p. 478 ("a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole").

7. **<u>The Lodestar Cross-Check</u>**

If deemed necessary, a "lodestar cross-check" of the settlement also confirms the propriety of the request.

As set forth in the attached Declaration of Eric K. Yaeckel and Raul Perez, the actual lodestar attorneys' fees incurred (to date) are estimated to amount to be approximately **$120,655.00** between all Plaintiffs' counsel. ($85,920.00 SYLG + $34,375.00 Capstone).

<u>Please Note</u>: For a detailed breakdown of the tasks performed, rates of pay and hours expended please see the declaration of counsel. (Yaeckel decl. ¶ 19; Perez decl. ¶ 14).

Based on past experience, counsel estimates the associates will incur an additional 5.0 hours (at a minimum) hours in assisting Class Members on questions and issues regarding the settlement, meeting with Class Members (including those who file "late" submissions), and preparing for and attending the Final Approval hearing in this matter. (Yaeckel decl. ¶ 19(c)).

8. <u>The Reasonableness of the Hourly Rates</u>

In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees by multiplying the time reasonably spent by plaintiffs' counsel on the case by a ***reasonable hourly rate***. *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009). To determine whether the requested rate is reasonable, courts look to the prevailing rate for similar work in the pertinent geographic region. *PLCM Group v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000) (using prevailing hourly rate in community for comparable legal services even though party used in-house counsel).

A trial court has discretion to use the "Laffey Matrix" when it comes to establishing attorneys' reasonable hourly rates in California State Courts. *See e.g. Syers Properties III, Inc. v. Rankin*, (2014) 236 Cal.App.4th 691, 702.

The referenced "Laffey" chart states that for the time periods in this case, for an attorney with **11-19** years experience, the matrix states a reasonable fee is between **$948- $747** per hour. Mr. Yaeckel has over **14** years experience working on class action litigation and only bill at the rate of **$700** per hour. (Yaeckel decl. ¶ 24). Moreover, this rate is justified given that "wage and hour" Class and/or Representative Action cases very rarely go to trial. Our firm is one of the few who have (successfully) tried numerous of these types of cases. I have also successfully argued in front of the California Supreme Court in a Class and Representative action that is frequently cited in "wage and hour" litigation involving Meal Period claims. *Donohue v. AMN Services, LLC,* (2021) 11 Cal.5th 58. (Yaeckel decl. ¶ 23).

For an attorney with **4-7** years experience, the matrix states a reasonable fee is between **$581 - $465** per hour. The associate Mr. Kuhn, who was working on this matter has over six years experience and billed at the rate of **$475** per hour. (Yaeckel decl. ¶ 25).

Moreover, the rates of co-counsel Capstone have frequently been found to be within the market range of hourly rates and are in line with the adjusted Laffey Matrix. (See Perez decl. ¶ 16-17).

Accordingly, Plaintiffs' Counsel's hourly rates are comparable to, or less than, those charged by other class action plaintiffs' counsel and the firms defending class actions, and have been approved by numerous federal and state courts. (Yaeckel decl. ¶¶26-27).

9. <u>No Lodestar "Multiplier" is Necessary</u>

<u>No</u> multiplier is requested, or necessary, as the fees requested of **$108,333.00** are <u>less</u> than the actual fees incurred. Specifically, Plaintiff's Counsel has incurred approximately **$120,655.00** in fees between all Plaintiffs' counsel. ($85,920.00 SYLG + $34,375.00 Capstone). in actual fees.

When plaintiffs seek an amount in fees that is less than what they actually billed, the requested fee amount is generally considered reasonable. See, e.g., *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010) (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 Plaintiff's Counsel.").

Additionally, the settlement provides the class with a substantial monetary amount and the class strongly supports the fairness of the settlement, even after being notified of the requested attorneys' fee award (0 **opt-outs**, **and <u>0</u> objections**). In the event the Court deems a lodestar analysis is necessary it will confirm that Plaintiff's fees are reasonable.

10. <u>The Amount of Costs</u>

Plaintiff's Counsel are also entitled to reimbursement of their litigation costs. Cal. Lab. Code §§ 1194(a), 2699(g)(1).

Class Counsel has expended approximately **$11,851.59** in costs, including filing fees, travel, mediation, copying and document preparation charges, deposition fees, expert fees, investigative fees, and delivery/service fees. (Yaeckel decl. ¶29 ; Perez decl. ¶ 18). Defendant agreed not to oppose an amount of up to $15,000.00 in costs. Accordingly, Plaintiffs' counsel therefore seeks approval of the actual costs of **$11,851.59**($11,758.99 SYLG and $92.60 to Capstone) (*Id.*).

C. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT IS REASONABLE

Plaintiffs Bravo and Laizure each request an enhancement award of **$5,000.00** for serving as the class representative. Defendant does **<u>not</u>** oppose this request. The class was notified and does **<u>not</u>** object.

A Plaintiff puts their future employment prospects at risk by becoming a class representative as the fact that they filed a class action lawsuit "is searchable on the internet and may become known to prospective employers when evaluating" the employee as a candidate. *Guippone v. BH S&B Holdings, LLC*, 2011 U.S., Dist. LEXIS 126026, *20 (S.D.N.Y. Oct. 28, 2011).

Plaintiffs contributed extensive time and resources in the prosecution of this case. Plaintiffs were able to provide information instrumental to the prosecution of this matter including identifying numerous witnesses that could corroborate his claims. Plaintiffs also assisted with reviewing and providing insight on Defendants' documents produced. (See Yaeckel decl. ¶31; Bravo decl. ¶¶ 3-8; Laizure decl. ¶¶ 5-10).

Moreover, by "sticking their necks out" as a Class Representative in a publicly filed lawsuit, Plaintiffs took a substantial risk that may adversely impact their ability to work in this field in the future. Any company who does a detailed background check, will be able to determine that Plaintiffs asserted legal claims against their former employer. An entire industry exists that allows employers to run extensive background searches on potential employees. Companies who provide these services specifically highlight the fact that their services allows employers to weed out litigious employment candidates. (Yaeckel decl. ¶¶ 32-34).

In addition, Plaintiffs co-workers have all been notified of the lawsuit, so there is a large pool of peers who now know they brought claims against a former employer, which could also jeopardize future positions.

Plaintiff also risked personally owing a large cost award, into the tens of thousands of dollars, based on the costs incurred by Plaintiffs, had the claims been unsuccessful. (Yaeckel decl. ¶ 35).

Despite all the risks, Plaintiffs at all times remained committed to securing a monetary recovery on behalf of the entire class. (See Bravo decl. ¶ 10; Laizure decl. ¶ 11; Yaeckel decl. ¶ 36).

Accordingly, Plaintiff asks the Court to approve a class representative enhancement in the amount of $5,000.00 to Mr. Bravo and $5,000.00 to Mr. Laizure.

VI. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court grant Plaintiff's Motion consistent with the accompanying proposed Order and Final Judgment.

Dated: October 15, 2025

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