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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

SYDNEY HOUSER, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

THE FISH HOUSE VERA CRUZ, INC., a
California Corporation; and DOES 1 to 100,

Defendants.

Case No.: 37-2023-00045659-CU-OE-NC
Honorable Cynthia A. Freeland, Dept. N-27

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF’S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: November 22, 2024

Time: 1:30 p.m.

Dept.: N-27

Action filed: October 20, 2023

Reservation No.: See order dated August 21,
2024

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Treatises

Coffee, Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions, 86 Colum. L. Rev. 669, 724-25 (1986).....	14
Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study, 53 UCLA L. Rev. 1303 (2006).....	8
Federal Courts Study Committee Report 105 (1990) (Judge Joseph F. Weiss, Chair); Third Circuit Report, 108 F.R.D. at 255	14
Newberg on Class Actions (4th ed. 2002) §11:38	8, 15

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1 This Memorandum is submitted in support of Plaintiff Sydney Houser’s (“Plaintiff”) Motion for Final Approval of Class and PAGA Settlement, approval of Attorneys’ Fees and Costs and the Class Representative enhancement. The proposed settlement before this Court will dispose of the action as to Defendant The Fish House Vera Cruz, Inc. (“Defendant”) and the Released Parties (as defined in the “Class Action and PAGA Settlement Agreement”). The Court granted Preliminary Approval on August 21, 2024. Pursuant to the Preliminary Approval Order, notice was sent to class members on or about September 20, 2024. The Declaration of Nathalie Beltran is to be filed in advance of the hearing¹. Plaintiff comes now seeking final approval, accordingly.

2 I. INTRODUCTION

3 Class Counsel and Plaintiff have achieved a fair and just result in this litigation, embodied in the Settlement Agreement. The proposed Settlement provides substantial benefits to Class Members, that did not request exclusion. As of the date of filing this motion, only one (1) person has requested exclusion from the class. The Settlement is the product of Class Counsel’s efforts to obtain the best possible result for the Class Members. 100% of the money will be paid out as there is no reversion to Defendant and 100% of the class members are being paid. Further, there are no objections made to the settlement as of the date of this motion (Supp Decl. Carney ¶36). The settlement of this action is fair, reasonable, and adequate and in the best interests of the Class. Accordingly, final approval should be granted.

4 II. ACTUAL SETTLEMENT VALUE

5 This settlement is of \$172,000.00 on a gross non-reversionary basis. Plaintiff and the class allege they were subject to the Defendant’s corporate policies and procedures. The Settlement provides monetary compensation to Class Members who allege eight causes of action: 1. Violation of Unfair Competition Law; 2. Failure to Provide Meal Breaks; 3. Failure to Provide Rest Breaks; 4. Work Expense Reimbursement Violations; 5. Violation of Labor Code §§ 351 and 353; 6. Waiting Time Penalty; 7. Wage Statement Penalty; 8. PAGA.

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¹ The deadline to timely file the motion is October 30, 2024. The deadline to opt out or object to the settlement is November 11, 2024. As such, ILYM will provide the court with a declaration no later than November 18, 2024.

Each class member will receive their settlement share. The total number of class members in the original mailing of the Settlement Notice was 258. The average settlement share for the entire class is approximately \$326.45. The largest settlement share will be approximately \$1,573.33 (Decl. Carney ¶5). The final settlement shares per class member shall be definitively calculated by the settlement administrator once this court enters an order finally approving the settlement. This settlement amounts to a good wage and hour settlement. It speaks volumes that there have been no objections to any term of the settlement and only one requests for exclusion from the class settlement.

A class representative service payment of \$5,000.00 is requested for the class representative and Plaintiff Sydney Houser. The service payment takes into consideration the time, effort and risks incurred by the Plaintiff in coming forward to litigate this matter on behalf of all class members. Plaintiff, by bringing this action, has assumed considerable reputational risk. Plaintiff has litigated this case for nearly one year. The class representative has also signed a general release for any and all claims, known or unknown, against Defendant and cannot pursue any other potential claims as detailed in Plaintiff's Declaration filed on July 1, 2024. There have been no objections to the enhancement request as of the date of filing of this motion.

Notice was sent to every class member via first-class mail (in English and Spanish) by the Settlement Administrator on September 20, 2024. Each Class Member's name, last known mailing address, social security number, and number of workweeks during the applicable Class Period was provided by Defendant to ILYM Group, Inc., through a review of Defendant's time and pay records. ILYM performed further searches on returned mail in an effort to locate each and every class member. ILYM followed up with additional mailings after updating address as a result of returned mail. Plaintiff is requesting administrator expenses in an amount not to exceed \$6,950.00.

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1 **C. Attorneys' Fees and Costs**

2 Plaintiff is requesting attorneys' fees in the reasonable sum of approximately 35% of the
3 fund, for a total fee of \$60,200.00. Plaintiff's counsel has received preliminary approval of the
4 total costs amount up to \$10,000.00 in addition to settlement administration costs.

5 **D. Labor And Workforce Development Agency**

6 Payment in the sum of \$7,500.00, will be made to the Labor and Workforce Development
7 Agency ("LWDA") allocated as \$5,625.00 to the LWDA and \$1,875.00 in individual PAGA
8 payments to the aggrieved employees based on their PAGA pay periods. The LWDA was served
9 with Plaintiff's Preliminary Approval papers on July 2, 2024, and this Court's Preliminary
Approval Order on or about September 4, 2024 (Supp Decl. Carney, ¶7).

10 **E. Uncashed Funds**

11 Checks issued to Participating Class Members shall remain negotiable for a period of one
12 hundred and eighty (180) days from the date of mailing. To the extent any Participating
13 Settlement Class Members fail to cash settlement checks within 180 days of issuance, any
14 monies remaining in the distribution account shall be distributed to the Controller of the State of
15 California to be held pursuant to the Unclaimed Property Law, Civil Code Section 1500 et seq.,
16 for the benefits of those Settlement Class Members who did not cash their checks
17 until such time they claim their property. The parties agree that this disposition results in no
18 "unpaid residue" under Civil Procedure Code Section 384, as the entire Net Settlement Proceeds
19 will be paid out to Settlement Class Members, whether or not they all cash their settlement
20 checks.

21 **IV. OUTSTANDING RESPONSE**

22 There have been no objections and one opt-out to the settlement as of the date of this
23 motion. The deadline to object or opt-out is November 4, 2024. All those that did not exclude
24 themselves, i.e., 257 class members, will be paid their share of the settlement. This response
speaks to the fairness, reasonableness, and adequacy of the Settlement.

25 **V. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

26 Pursuant to both state and federal rules of civil procedure a class action shall not be
27 dismissed or compromised without the approval of the court and notice of the proposed dismissal
28 or compromise shall be given to all members of the class in such manner as the Court directs.

1 Rule of Court 3.769. In deciding whether to grant final approval to proposed class action
2 settlement, the Court's overriding concern is whether the proposed settlement is "fair, adequate,
3 and reasonable." *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801 (quoting
4 *Officers for Justice v. Civil Service Com.* 688 F.2d 615, 625, (9th Cir. 1982), cert. Denied (1983)
5 459 U.S. 1217).

6 **A. The Settlement is Entitled to a Presumption of Fairness**

7 A presumption of fairness exists where: 1) The settlement is reached through arm's length
8 bargaining; 2) Investigation and discovery are sufficient to allow counsel and the Court to act
9 intelligently; 3) Counsel is experienced in similar litigation; and 4) the percentage of objectors is
10 small. *Dunk v. Ford Motor Company* supra, 48 Cal.App.4th at 1802.

11 To prevent fraud, collusion or unfairness to the Class, the settlement or dismissal of a
12 class action requires Court approval. *Malibu Outrigger Bd. of Governors v. Superior Court*
13 (1980) 103 Cal.App.3d 573, 578-579. The purpose of the requirement is the protection of those
14 Class Members, including the named Plaintiff, whose rights may not have been given due regard
15 by the negotiating parties. *Officers for Justice*, supra, 688 F.2d at 624. The trial court has broad
16 powers to determine whether a proposed settlement in a class action is fair. *Mallick v. Superior*
17 *Court* (1979) 89 Cal.App.3d 434.

18 At the Final Approval Hearing, the Court should consider the relevant factors, such as the
19 strength of the plaintiffs' case, the risk, expenses, complexity and likely duration of further
20 litigation, the risk of maintaining class action status through trial, the amount offered in
21 settlement, the extent of discovery completed and the stage of the proceedings, the experience
22 and views of counsel, the presence of a governmental participant and the reaction of the Class
23 Members to the proposed settlement. *Officers for Justice*, supra, 688 F.2d at 624. "This list is not
24 exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a
25 private consensual agreement between the parties." *Dunk v. Ford Motor Company*, supra, 48
26 Cal.App.4th at 1801.

27 **B. The Settlement Was Reached Through Arm's Length Negotiations**

28 On May 8, 2024, the Parties participated in an all-day mediation presided over by Jeff
Fuchsman, Esq., which led to the Class Action and PAGA Settlement Agreement. The Parties
agreed to a settlement in principle at the mediation and executed a Memorandum of

1 Understanding. This settlement was reached through arm's length negotiations after extensive
2 informal discovery. The Parties began negotiating the specific terms of the long form settlement
3 after the mediation and were able to agree on all terms in the Class Action and PAGA Settlement
4 Agreement (a true and correct copy of which is attached to the Declaration of Janelle Carney
5 filed in support of Preliminary Approval on or about July 1, 2024, as Exhibit 1).

6 **C. Sufficient Discovery and Investigation has Been Completed to Warrant**
7 **Settlement**

8 The stage of the proceedings and the amount of discovery completed is an important
9 factor which the Courts consider in determining the fairness, reasonableness, and adequacy of a
10 settlement. *In re Warner Communications Sec. Litig.*, 618 F.Supp.735, 741 (S.D.N.Y. 1985),
11 *affid.*, 198 F.2d 35 (2d Cir. 1986); *Ellis v. Naval Air Rework Facility*, 87 F.R.D.15, 18 (ND Cal,
12 1980), *affid.*, 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, 485 F.Supp.610, 616-17 (N.D.
13 Cal.1979). Over the course of this litigation, Plaintiff's counsel propounded meaningful
14 discovery, engaged in informal data exchange, including the Plaintiff's and class payroll records
15 and sampling of time records, and reviewed of thousands of pages of documents, and hired an
16 expert, as set forth in the Declaration of Janelle Carney in support of preliminary approval.

17 The settlement that has been reached is the product of tremendous effort, and expense by
18 the parties and their counsel. Prior to engaging in Settlement discussions, Defendant produced
19 data through formal discovery and informally through settlement privilege based on a requested
20 demand by Plaintiff's counsel and voluminous documents, including time records, payroll
21 records, the Plaintiff's personnel file, and Defendant's policies and procedures, as agreed to by
22 the parties. The class representative provided extensive information regarding the Defendant's
23 business that aided the parties reaching the ultimate settlement figure.

24 **D. Class Counsel is Experienced and Endorses the Settlement**

25 Experienced counsel operating at arm's length, have weighed all of the foregoing factors
26 and endorse the proposed settlement. As the Courts have explained, the view of the attorneys
27 actively conducting the litigation, is "entitled to significant weight." *Fisher Bros. V. Cambridge-*
28 *Lee Industries, Inc.*, 630 F.Supp.482, 488 (E.D. Pa. 1985); see also *Ellis*, *supra*, 87 F.R.D. at 18;
Boyd, *supra*, 485 F.Supp. at 616-17. Class Counsel has experience in class actions and
employment litigation, and specifically in wage and hour class actions. (See Decls. Carney and

Rose, filed July 1, 2024) Class Counsel are experienced and qualified to evaluate the Class claims and viability of the defenses. *Id.* The recovery for the class is substantial, given the risks inherent in litigation and the defenses asserted. This settlement is fair, adequate and reasonable and in the best interests of the Class. *Id.*

E. No Objections and One Opt-Out Has Been Made to the Settlement

There has not been a single objection to the settlement as of the date of this filing. The lack of objectors and the fact that there has been one opt-out is a testament to the fairness, reasonableness and adequacy of the settlement.

F. The Settlement Should Receive Final Approval

In California, courts highly favor the settlement of class actions. In determining whether to finally approve a class action settlement, California courts look to whether a proposed settlement, taken as a whole, is fair, reasonable, adequate and in the best interests of the class. See Cal. R. of Ct. 3.769; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). Among the inter-related factors that the Court should consider are: (1) the strength of plaintiffs' case; (2) the expense, complexity and likely duration of further litigation; (3) the benefits conferred by the settlement; (4) the experience and views of counsel; (5) the extent of discovery completed and the stage of the proceedings; and (6) the reaction of the class members to the proposed settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 244-245 (2001); *Dunk*, 48 Cal. App. 4th at 1801. "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal. App. 4th at 245. The Declaration of Janelle Carney in support of preliminary approval filed on July 1, 2024, discussed the *Kullar v. Footlocker Retail, Inc.* (1996) 168 Cal.App.4th 116, 118 and *Dunk* factors in detail at p. 15, ¶8.

As courts have explained, "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial." *Id.* at 246. 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." *Id.* at 250 (quoting *Air Line Stewards, etc., Loc. 550 v. American*

1 *Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)). The standards for final approval are clearly
2 met in this case.

3 **VI. CLASS COUNSEL IS EXPERIENCED AND ENDORSES THE SETTLEMENT**

4 Experienced counsel, operating at arm's length, has weighed all of the foregoing factors,
5 and endorses the proposed settlement. As the Courts have explained, the view of the attorneys
6 actively conducting the litigation is "entitled to significant weight." *Fisher Bros. V. Cambridge-*
7 *Lee Industries, Inc.*, 630 F.Supp.482, 488 (E.D. Pa. 1985); see also *Ellis v. Naval Air Rework*
8 *Facility*, 87 F.R.D.15, 18 (ND Cal, 1980); *Boyd v. Bechtel Corp.*, 485 F.Supp.610, 616-17 (N.D.
9 Cal.1979). The three (3) lawyers working at the two (2) law firms representing the class have
10 more than 53 collective years of experience as lawyers in the class action arena. This settlement
11 is an excellent result for the 257 class members as it results in a gross non-reversionary
12 settlement of \$172,000.00 and the class representative and attorneys' requests should be granted.

13 **VII. THE CLASS REPRESENTATIVE'S ENHANCEMENT FEE IS REASONABLE**
14 **AND SHOULD BE AWARDED**

15 A class representative service payment of \$5,000.00 is requested for Plaintiff. Class
16 counsel strongly urges the Court to approve the service payment request. The service payment
17 takes into consideration the time, effort and risks incurred by the named Plaintiff in coming
18 forward to litigate this matter on behalf of all class members. The class representative essentially
19 risked her future employability and primary source of income to bring this lawsuit on behalf of
20 the class. As detailed in Plaintiff's Preliminary Approval declaration, she gave up viable
21 individual claims to represent the class in the case.

22 The Class Representative reviewed hundreds of pages of documents during the pendency
23 of the case, including participating in the review of the informal discovery used for mediation,
24 providing documents, and providing invaluable information regarding Defendant's policies and
25 payroll practices, and was available during the mediation to continue to answer questions.
26 Plaintiff has always responded to calls and emails to aid in this case. The named Plaintiff
27 substantially helped the class lawyers and was always a champion for the class members. The
28 Defendant has not opposed the requested service payment to the class representative. Further,
there have been no objections to the requested amount.

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1 Incentive awards “are fairly typical in class action cases.” *Cellphone Termination Fee*
2 *Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez*
3 *v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions
4 (4th ed. 2002) §11:38, and Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An
5 Empirical Study, 53 UCLA L. Rev. 1303 (2006). Incentive awards “are intended to compensate
6 class representatives for work done on behalf of the class, to make up for financial or
7 reputational risk undertaken in bringing the action, and, sometimes, to recognize their
8 willingness to act as a private attorney general.” *Rodriguez*, 563 F.3d at 958–59. “[T]he rationale
9 for making enhancement or incentive awards to named plaintiffs is that they should be
10 compensated for the expense or risk they have incurred in conferring a benefit on other members
11 of the class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 806 (2009).

12 The incentive award is reasonable in light of Plaintiff’s services as a class representative.
13 Indeed, but for Plaintiff’s services, it is unlikely that any other Class Member would have come
14 forward to represent the interests of the class as to the causes of action that were litigated herein.
15 Class Members would have recovered nothing for their claims, and with the passage of time, the
16 claims in controversy would have been barred. The incentive award is thus fair and reasonable
17 compensation for Plaintiff’s efforts in bringing the action, assisting counsel with the review of
18 discovery and regularly conferring with counsel on the status of his case and the strategies for
19 prosecuting her claims. Plaintiff deserves the requested incentive award because she “remained
20 fully involved and expended considerable time and energy during the course of the litigation.”
21 See *Schaffer v. Litton Loan Servicing, LP*, No. 05-07673- MMM, 2012 U.S. Dist. LEXIS
22 189830, *61 (C.D. Cal. Nov. 13, 2012) (citation omitted). The incentive award is also
23 appropriate because Plaintiff would otherwise “not gain any benefit beyond that he [or she]
24 would receive as an ordinary class member.” See *In re Toys “R” Us FACTA Litig.*, 295 F.R.D.
25 at 472; *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (holding
26 that a substantial award is appropriate where a class representative’s claim made up “only a
27 fraction of the common fund.”). Absent the incentive award, Plaintiff will recover no more than
28 other Class Members, despite undergoing personal sacrifices in bringing this suit on behalf of the
Class. The incentive award is also justified in light of the general release that she was required
to sign. (Civ. Code § 1542 general release that Plaintiff is required to provide Defendant as a

1 condition of settlement.) Under the Cal. Civ. Code § 1542 release, Plaintiff will release any and
2 all claims she may have against Defendants arising out of her employment. This general release
3 is considerably broader than the separate, narrower release required of the Class, a consideration
4 that further supports the requested incentive awards (Supp Decl. Carney ¶31). Plaintiff submitted
5 a declaration in support of preliminary approval on or about July 1, 2024.

6 Separately, the incentive awards are justified in light of the reputational risk that Plaintiff
7 has assumed in bringing an action against a former employer. See *Guippone v. BH S&B*
8 *Holdings LLC*, 2011 U.S. Dist. LEXIS 126026, at **4, 20 (S.D.N.Y. Oct. 28, 2011) (“[T]he fact
9 that a plaintiff has filed a federal lawsuit is searchable on the internet and may become known
10 to prospective employers when evaluating the person . . . Even where there is not a record of
11 actual retaliation, notoriety, or personal difficulties, class representatives merit recognition for
12 assuming the risk of such for the sake of absent class members.”). Employers commonly screen
13 employee candidates to determine whether they have ever filed suit, and employee candidates
14 who might be branded “litigious” are likely to be screened out of the process.

15 By bringing this action, Plaintiff has assumed considerable reputational risk that may
16 impact her ability to find employment in the near and distant future, especially in the small
17 community in which Plaintiff was employed. Long after this action is forgotten by Class
18 Members, Plaintiff will have to endure the risk of being branded “litigious” by prospective
19 employers and may have employment applications rejected on that basis alone.

20 The requested incentive award is fair, adequate, and reasonable compensation for
21 Plaintiff’s services on behalf of the Class and for the risks and personal sacrifices she assumed
22 and endured. The enhancement should be awarded for the Plaintiff’s commitment and
23 dedication to the litigation and for her work performed. Plaintiff was unwilling to settle the class
24 action until she felt it was in the best interests of the Class. Furthermore, this litigation has
25 resulted in a valuable benefit to the 257 Class Members who are participating because of the
26 named Plaintiff.

27 Additionally, Plaintiff risked a potential judgment against her if this matter was
28 unsuccessful. Case law holds that a losing party is liable for the prevailing party’s costs.
Therefore, the Class Representative could have been liable for tens of thousands of dollars if this
case was unsuccessful. Few individuals are willing to take this risk, and Plaintiff was a champion

on behalf of others' cause with potential monetary risks which were very significant. Accordingly, the request is fair and reasonable and should be awarded.

It is noted that in *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 U.S. Dist. LEXIS 49477 the Court indicated a \$20,000 enhancement award was "well justified," given the plaintiff lent "her name to this case, and thus subjecting herself to public attention. . . devoted considerable time and attention to this case for the benefit of the Class." *Garner* supra at *46 (N.D. Cal. Apr. 22, 2010).

VIII. PLAINTIFF'S REQUEST FOR ATTORNEYS' FEES AND COSTS SHOULD BE APPROVED

Plaintiff seeks court approval of attorneys' fees in the sum of \$60,200.00, which equals 35% of the total settlement of \$172,000.00, plus costs not to exceed \$10,000.00. The court should grant Plaintiff's request for the following reasons:

1. Class counsel has obtained a favorable settlement for the class members as evidenced by the following facts:

- a. 100% of the \$172,000.00 gross settlement fund will be paid;
- b. All class members received notice of the amount of attorneys' fees and costs that would be requested and there have been no objections and one opt-out to date.
- c. The percentage of recovery method for determining attorneys' fees is the preferred method in a common fund case.
- d. The settlement amount is non-reversionary and 35% of the common fund results in \$60,200.00, a reasonable fee request under the circumstances of this case.
- e. A lodestar "cross check" also supports the fee request in this case. Currently, there are three attorneys' hours and paralegal hours spent between the firms for an approximate lodestar of \$135,620.00. It is anticipated that Plaintiff's counsel will spend another fifteen (15) hours through the remainder of the notice period and thereafter to ensure Plaintiff and the class receive their settlement checks after final approval, including post approval filings (Supp Decl. Carney ¶25).

1 **IX. PLAINTIFF'S REQUEST FOR ATTORNEYS' FEES AS A PERCENTAGE OF**
2 **THE RECOVERY SHOULD BE APPROVED BECAUSE THIS IS A COMMON FUND**
3 **CASE**

4 Class Counsel's application for an award of attorneys' fees in an amount of 35% of the
5 settlement created on behalf of the Class is fair and reasonable. The requested fee falls on the
6 lower end of the Ninth Circuit's historical benchmark for attorneys' fees of 20% to 50% of a
7 common fund and is fair compensation for undertaking complex, risky, expensive, and time-
8 consuming litigation on a contingent basis. Further, the Class Representative signed a contingent
9 fee agreement allowing for a fee up to 35% of the total fund and reimbursement of actual
10 litigation costs (Supp Decl. Carney ¶9).

11 The requested fees are extremely reasonable, based on the results achieved for the Class
12 Members. Class Counsel respectfully requests that the Court enter an Order to that effect. Class
13 Counsel seeks a fee award calculated as a percentage of the total value of settlement, for the
14 successful prosecution and resolution of this action. California state and federal courts have
15 recognized that an appropriate method for determining award of attorneys' fees is based on a
16 percentage of the total value of benefits to Class Members by the settlement, not the amount
17 claimed. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert*, 444 U.S. 472,
18 478 (1980); *Vincent v. Hughes Air West, Inc.* 557 F.2d 759, 769 (9th Cir. 1977). The purpose of
19 this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs
20 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
21 burden alone." *Id.* at 769.

22 In *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 503, the California
23 Supreme Court affirmed the court of appeal decision and held that trial courts may grant
24 attorneys' fees in a common fund case based on a percentage of the recovery. The *Laffitte* Court
25 explained:

26 We join the overwhelming majority of federal and state courts in
27 holding that when class action litigation establishes a monetary
28 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,

1 a better approximation of market conditions in a contingency case,
2 and the encouragement it provides counsel to seek an early
3 settlement and avoid unnecessarily prolonging the litigation...—
4 convince us the percentage method is a valuable tool that should
5 not be denied our trial courts. *Id.*

6 Under the “common fund” doctrine, “a litigant or a lawyer who recovers a common fund
7 for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee
8 from the fund as a whole.” *Boeing*, supra, at 478. The Supreme Court explained:

9 The doctrine rests on the perception that persons who obtain the
10 benefit of a lawsuit without contributing to its cost are unjustly
11 enriched at the successful litigant's expense. Jurisdiction over the
12 fund involved in the litigation allows a court to prevent this
13 inequity by assessing attorney's fees against the entire fund, thus
14 spreading fees proportionately among those benefited by the suit.
15 (Id. [citation omitted].)

16 Thus, the common fund doctrine ensures that each member of the class contributes
17 proportionately to the payment of attorneys' fees recovered from monetary payments that the
18 prevailing party recovered in the lawsuit. “Put another way, in common fund cases, a variant of
19 the usual rule applies and the winning party pays his or her own attorneys’ fees; in fee-shifting
20 cases, the usual rule is rejected and the losing party covers the bill.” *Stanton v. Boeing*, 327 F.3d
21 938 (9th Cir. 2003) at 967, citing *Wininger v. SI Mgmt. L.P.* 301 F.3d 1115 (9th Cir. 2002). In a
22 typical “common fund” case, the defendant pays the entire lump sum settlement and has no
23 further interest in the amount of the fee award, as any reduction in the fee award reverts to the
24 class members. *Stanton*, supra, at 971. The common fund doctrine is predicated on the principle
25 of preventing unjust enrichment. When a litigant’s efforts create or preserve a fund from which
26 others derive benefits, the court may spread litigation costs proportionally among all the
27 beneficiaries to compensate those who created the fund. Further, the Rutter Group’s California
28 Practice Guide: Civil Trials and Evidence acknowledges the applicability of the common fund
doctrine and describes it as follows: “Where the lawsuit results in the recovery of a fund or
property benefitting others as well as the plaintiff (e.g., a class action), the court has inherent
equitable power to order Plaintiff’s attorney’s fees paid out of the common fund or property.”
[See *Serrano*, supra, at 35.]

1 Such ‘fee spreading’ assures that all those benefited by the litigation pay their fair share
2 of obtaining the recovery. *Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 26
3 (“Percentage fees have traditionally been allowed in such common fund cases.” *Id.* at 27.)
4 Despite dicta in one California court of appeal case critical of percentage fee awards, the
5 Supreme Court has long approved of awarding fees as a percentage of the settlement. *Serrano*,
6 *supra*, at 35, describing percentage fee awards, has never been overruled, and remains good law.

7 The most extensive California Court of Appeal discussion of class fee awards appears in
8 *Lealao*, *supra*, 82 Cal.App.4th at 27. *Lealao* applied a lodestar analysis in favor of a percentage
9 of the settlement recovery, but did not disapprove of percentage fee awards. Since *Serrano*, there
10 has been a “groundswell of support for mandating the percentage-of-the-fund approach in
11 common fund cases.” *Id.* In a case affirming the denial of fees to a successful objector to a class
12 action settlement, *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.* (2005) 127
13 Cal.App.4th 387, the court discussed the common fund doctrine developed by the U.S. Supreme
14 Court: “The common fund doctrine, frequently applied in class actions when the efforts of the
15 attorney for the named class representatives produce monetary benefits for the entire class, is
16 rooted in the ‘historic power of equity to permit ... a party preserving or recovering a fund for the
17 benefit of others in addition to himself, to recover his costs, including his attorneys’ fees, from
18 the fund or property itself or directly from the other parties enjoying the benefit.” (*Id.* at 397.)

19 Thus, California cases, including the California Supreme Court ruling in *Laffitte*, *supra*,
20 have affirmed the continued validity of percentage fee awards in class action cases. Under these
21 principles, a percentage of the common fund fee award is properly based on the total settlement
22 value of \$172,000.00. For Class Counsel, the fees here were wholly contingent in nature and the
23 case presented far more risk than the usual contingent fee case. There was the prospect of the
24 enormous cost inherent in class action litigation, as well as a long battle with a corporate
25 Defendants. That prospect has previously become reality, in both trial courts and the Court of
26 Appeals in other wage and hour Class litigation. Class Counsel risked not only a great deal of
27 time, but also a great deal of expense to ensure the successful litigation of this action on behalf of
28 all Class Members.

 Federal cases discussing and approving percentage fee awards in class cases are legion
(See, e.g., *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Staton v. Boeing Co.*, *supra*, 327

1 F.3d at 938; *Vizcaino*, supra, 290 F.3d 1043; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977)
2 557 F.2d 759, 769.) The present case is a classic common fund case. Here, Plaintiff’s counsel
3 created a non-reversionary settlement fund of \$172,000.00 for the benefit of the class members.
4 The fund was created by counsels' efforts. *Serrano*, supra, 20 Cal.3d at 35. The settlement
5 mandates that Defendants fund the settlement. See *Id.* The value of the fund is easily calculable.
6 *Id.*

7 **A. The Percentage of Recovery Method Promotes Important Values in the**
8 **Judicial System**

9 Numerous authorities have advocated the use of the percentage of recovery (“POR”)
10 method because it promotes important values in the administration of justice. See Federal Courts
11 Study Committee Report 105 (1990) (Judge Joseph F. Weiss, Chair); Third Circuit Report, 108
12 F.R.D. at 255. POR emphasizes the results achieved rather than the time spent on the case. POR
13 more congruently aligns the interests of the attorney and the class by avoiding many of the
14 conflicts of interest the Lodestar method can generate. See *In Re Brooktree Sec. Litig.* (S.D. Cal.
15 1996) 915 F.Supp. 193, 196. The POR method also economizes scarce judicial resources.
16 Coffee, Understanding the Plaintiff’s Attorney: The Implications of Economic Theory for Private
17 Enforcement of Law Through Class and Derivative Actions, 86 Colum. L. Rev. 669, 724-25
18 (1986) (cited with approval in *In Re Activision Sec. Litig.*, supra, 723 F. Supp. at 1376 (use of
19 percentage recovery method decreases the burden imposed upon the court by other fee award
20 methods); *Swedish Hosp. Corp.*, 1 F.3d at 1269 (POR is less demanding of scarce, judicial
21 resources)).

22 By using the POR approach, the court examines the proposed percentage of recovery to
23 determine whether it falls within the acceptable range of a reasonable fee under the POR
24 approach. Then, the court makes an inquiry to determine whether any special circumstances
25 exist that warrant an increase or decrease from the accepted benchmark figure. See generally *In*
26 *Re Activision Sec. Litig.*, supra, 723 F. Supp. at 1377-1379.

27 **B. The California Supreme Court Has Approved Use of the POR Approach**

28 The California Supreme Court approved the use of the POR approach. *Laffitte*, supra 1
Cal.5th 480, 503; *Sanders v. City of Los Angeles* (1970) 3 Cal. 3d 252, 262. In *Sanders*, Class
Counsel had succeeded in creating a common fund to pay compensation to city employees. The

1 trial court held that the case was a proper one for surcharging the common fund and ordered that
2 Class Counsel be awarded fees based on a percentage of the recovery from the common fund.
3 Id. at 261. The court thus permitted recovery on a percentage basis (which is the same
4 percentage as Class Counsel seeks in this case). See Richard M. Pearl, California Fee Awards
5 (Second) § 11.11 at 11-17.

6 **C. A Recovery of 35 % of the Common Fund Constitutes a Reasonable Fee**

7 As a general rule, an award of attorneys' fees of between 25% and 35% of a common
8 fund constitutes a reasonable fee. In the following cases in California, courts awarded between
9 25 and 35 percent: *Hayes v. Haushalter* (In re FPI/Agretech Sec. Litig.) (9th Cir. 1997) 105 F.3d
10 469 (25% and 35%); *Pacific Enterprises Sec. Litig.*, (9th Cir. 1995) 47 F. 3d 373 (33% of 12
11 Million settlement); *In re Tuscon Elec. Co. Sec. Litig.*, (9th Cir. 1993) 8 F. 3d 1370, 1379 (25%
12 of \$30 million); *Antonopulos v. North Am. Thoroughbreds, Inc.*, (S.D. Cal. 1991) [1991] Fed.
13 Sec. L. Rep. (CCH) ¶ 96,058 (33%); *Roberts v. Heim* (N.D. Cal. 1991) [1991] Fed. Sec. L. Rep.
(CCH) ¶ 96,221 (30% of partial settlement of \$17.75 million).

14 **X. THE ATTORNEYS' FEES ARE REASONABLE EVEN UNDER A LODESTAR**
15 **ANALYSIS**

16 Once it is determined that the POR approach is proper, analysis of other lodestar/factor
17 considerations are not necessary. Nevertheless, such factors, if considered would support the
18 fees requested in this case.

19 **A. The Results Achieved**

20 "The quality of work performed in a case that settles before trial is perhaps best measured
21 by the benefit obtained." *In re Warner Communications Sec. Litig.* (S.D.N.Y. 1985) 618 F.Supp.
22 735, 748. See also Manual for Complex Litigation (Third), § 24.121 at p. 204 (stating that size
23 of the fund should be given the most emphasis). The common fund is itself the measure of
24 success and represents the benchmark from which a reasonable fee will be awarded. Newberg
25 and Conte, Newberg on Class Actions, 4th ed. § 14.6 at p. 550. In the case at bar, the settlement
26 is favorable to the class members and gives them a substantial portion of the total settlement.
27 This is not a "coupon" settlement but will put money in the hands of the class members who
28 continued to work in the industry.

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1 **B. The Risks of the Litigation**

2 It has been recognized that one of the primary factors justifying a contingency fee award,
3 not dependent solely on the amount of time expended, is the attendant risks inherent in the
4 litigation. As observed in *City of Detroit v. Grinnell Corporation*, (2d Cir. 1974) 495 F.2d 448,
5 470:

6 No one expects a lawyer whose compensation is contingent upon
7 his success to charge, when successful, as little as he would charge
8 a client who had agreed to pay for his services, regardless of
9 success. Nor, particularly in complicated cases producing large
recoveries, is it just to make a fee depend solely on reasonable
amount of time expended.

10 The need to fairly compensate attorneys who undertake risky litigation on behalf of
11 Plaintiff classes was also noted in *Muehler v. Land O'Lakes, Inc.*, (D. Minn. 1985) 617 F.Supp.
12 1370, 175-76 where, in justifying the award of fees representing 35% of the recovery fund, the
13 court observed: If the plaintiffs' bar is not adequately compensated for its risk, responsibility,
14 and effort when it is successful, then effective representation for plaintiffs in these cases will
15 disappear . . .

16 It is clear that prosecuting class action wage and hour cases on behalf of a Plaintiff on a
17 contingency basis is a risky business. There is no certainty that the class will be certified, or
18 even if that hurdle is overcome, that Plaintiff will prevail on the merits, or even if that hurdle is
19 overcome, that the amount of damages, which can be established justifies the time and costs.
20 Plaintiff's attorneys who take these cases not only risk losing and receiving no fees, but they also
21 risk not being reimbursed for costs. Moreover, even if they win, it may take years and years to
22 obtain any recovery. In the case at bar, there was a real risk of never recovering any monies for
the class due to various factors in wage and hour litigation.

23 The risks can be illustrated by the reported decisions in other wage and hour class action
24 cases in which defendants prevailed, either on the merits, or on class certification, and despite
25 Plaintiff's attorneys devoting hundreds, if not thousands of hours to the case, and tens of
26 thousands of dollars in costs, they received nothing. Some recent examples of such cases are:
27 *Areso v. CarMax, Inc.* (2011) 195 Cal.App.4th 996; *Sotelo v. Median News Group, Inc.* (2012)
28 2012 WL 1955054; *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244; *Miller v.*

1 *Farmers Insurance* (2007) 481 F.3d 1119; and *Dunbar v. Albertson's, Inc.* (2006) 141
2 Cal.App.4th 1422. Adding to the risk was the fact that Defendant was represented by Berger &
3 Williams, a prominent law firm with extensive experience in defending wage and hour class
4 actions. The quality of opposing counsel is another factor to utilize in determining attorney's
5 fees. As the court stated in *In Re Equity Funding Corp. Secl. Litig*, 438 F.Supp 1303, 1337 (C.D.
6 Cal 19787) "Plaintiffs' attorneys in this class action have been up against established and skillful
7 defense lawyers, and should be compensated accordingly." There have been two firms who
8 contributed to the success of this case. Further, Plaintiff's counsels' firms incurred substantial
9 costs and time in prosecuting this action and getting this case to early resolution. Class counsel
10 risked not only a great deal of time, combined the two firms have spent approximately 166.20
11 hours to date.

12 To summarize Plaintiff's lodestar request, Plaintiff's counsels' time summaries show that
13 they will have worked approximately 166.20 hours on this case². They request the Court find that
14 their requests of \$850.00 an hour for Janelle Carney of Janelle Carney – Attorney at Law, APC;
15 \$650.00 an hour for Manny Starr, \$800.00 an hour for Adam Rose of Frontier Law Center, are
16 fair and reasonable. See Supplemental Declarations of Carney and Rose filed concurrently
17 herewith.

18 At the requested rates, this results in a total lodestar amount of \$135,620.00. Further, the
19 total amount of attorneys' fees requested in this matter and preliminarily approved on August 21,
20 2024, is \$60,200.00. As such the fee split is as follows:

Janelle Carney – Attorney at Law, APC (50%)	\$30,100.00
Frontier Law Center (50%)	\$30,100.00
Total Fee Request	\$60,200.00

21 Plaintiff's counsel has also invested substantial costs to ensure the successful mediation
22 of this action on behalf of all class members, including hiring an expert. Plaintiff's counsel
23 advanced and incurred costs that will not exceed the allocated \$10,000.00, not including claims
24 administration costs and will continue to accrue costs through final distribution of approximately
25

26
27 ² Janelle Carney Attorney at Law's total time to date is 66.20 hours (see Supplemental Carney Decl ¶25)
28 Frontier Law center estimates a 100 hours and will file a supplemental declaration accordingly.

1 \$500.00. (The total costs requested will not exceed the settlement agreement amount of
2 \$10,000.00). To date, the total costs incurred by counsel are \$7,861.14³ (Supp Decl. Carney,
3 ¶15; Decl. Rose filed July 1, 2024 ¶2).

4 **XI. THE DEGREE OF COMPETENCE AND SKILL OF COUNSEL**

5 The attorneys representing the class representative have more than 53 years of combined
6 experience in the area of employment and labor law. Plaintiff's counsels' firm has been involved
7 in many other class actions and employment matters. The two law firms collectively have
8 extensive experience and recognized expertise in class action matters. The class counsels'
9 qualifications, along with the qualifications of the attorneys at each law firm, who rendered
10 services on this matter, are set forth in their declarations filed with preliminary approval on or
11 about July 1, 2024.

12 Class Counsels' request for a fee of 35% of the common fund is consistent with, and
13 indeed comparable to customary fee arrangements in private litigation, which generally ranges
14 from 30% to 40%. Class Counsel is entitled to the fee they would have received had they
15 handled a similar suit on a contingent fee basis with a similar outcome. *In re Continental Illinois*
16 *Sec. (7th Cir. 1992) 962 F.2d 566, 572.* The court should consider the nature of the contingent
17 agreements between counsel and the class representatives. See *Kirkorian v. Borelli*, 695 F.Supp.
18 (N.D. Cal. 1988) 446, 455-456 (looking to the contingency fee agreements between counsel and
19 members of the class for guidance). These agreements are relevant because “[i]n common fund
20 cases, it is reasonable that the fee award will be within those percentage ranges, based on historic
21 and prevailing market rates for contingent representation.” *In re M.D.C. Holdings Sec. Litig.*
22 (1990) U.S. Dist. Lexis 15488 Citing: Fed. Sec. L.Rep. (CCH) ¶ 66,995 (stating that “in private
23 contingent litigation, fee contracts have traditionally ranged from 30% to 40% of the total
24 recovery. If this were a non-representative litigation, the customary fee arrangement would be
25 contingent, on a percentage basis, and in the range of 30% to 40% of the recovery.”)

26 In prosecuting this action, Plaintiff's counsel vindicated an important public policy. The
27 wage provisions of the Labor Code, as well as the other Labor Code sections alleged to have
28

³ Not including the costs associated with filing the herein motion or post approval filings. It is anticipated that additional costs up to \$500.00 will be incurred.

1 been violated, constitute an important public policy in this State. Moreover, the State relies on
2 the private enforcement of these rights in order to vindicate this public policy.

3 **XII. THE TOTAL HOURS WORKED ON THIS CASE AND A LODESTAR**
4 **ANALYSIS**

5 Although counsel believes that the overwhelming authority supports a POR approach, counsel
6 is providing the number of hours devoted to this case, counsels' hourly rates, and a calculation of
7 a lodestar multiplier for the Court's consideration. As is set forth in the Supplemental
8 Declaration of Janelle Carney, class counsel devoted over 166 hours to this matter as of the date
9 of drafting this motion, which does not include time to attend and appear at the Final Approval
10 hearing and future work through final distribution. That is Plaintiff anticipates at least 15 hours
11 to conclude the matter. A reasonable hourly rate is the prevailing rate charged by attorneys of
12 similar skill and experience in the relevant community. *PLCM Group, Inc. v. Drexler* (2000) 22
13 Cal. 4th 1084, 1095. The court may consider other factors when determining a reasonable hourly
14 rate, e.g., the attorney's skill and experience, the nature of the work performed, the relevant area
15 of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol*
(1998) 61 Cal. App. 4th 629, 632. The hourly rates are reasonable.

16 Under either theory of awarding fees, the case that should govern the court's decision is
17 *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19 (2000). *Lealao* stands for the
18 proposition that court-awarded attorneys' fees should approximate what counsel could get on the
19 free market for the same services. (*Id.* at 50.) Specifically, *Lealao* holds that if the Court sets
20 fees under a lodestar, the multiplier should consider what counsel would have earned on the free
21 market. The free market is determined by the percentage of the common fund, not the lodestar
22 amount. (*Id.*) Accordingly, whatever method the Court uses to set fees, the Court should look to
23 what the free market would bear under any circumstances. Even if the Court awards fees under
24 the lodestar method, under *Lealao*, the lodestar fees should be adjusted by a multiplier to reflect
25 the percentage of the common fund. (*Id.* at 19 and 50.) The issue on this motion is not why the
26 court should award a fee equal to 35% of the settlement amount, but why the court should not
27 award such a fee. Under the lodestar method, a base fee amount is calculated from a compilation
28 of time reasonably spent on the case and the reasonable hourly compensation of the attorney. The
base amount is then adjusted in light of various factors. (*Serrano III*, supra, 20 Cal. 3d at 48).

1 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
2 experience in the relevant community. (*PLCM Group, Inc. v. Drexler* 22 Cal. 4th 1084, 1095
3 (2000).) The court may consider other factors when determining a reasonable hourly rate, e.g.,
4 the attorney's skill and experience, the nature of the work performed, the relevant area of
5 expertise and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* 61
6 Cal. App. 4th 629, 632 (1998).) A major difference between the National Law Journal Survey of
7 defense firms, and reasonable fees for Plaintiff's firms, is that these defense attorneys are paid on
8 a monthly basis and earn interest on outstanding balances. Further, these defense firms usually
9 do not have to advance costs on a case for a protracted period. To the contrary, Plaintiff's
10 counsel is only paid if they win and must advance all costs until the case is resolved.
11 Furthermore, in the case at bar, whether Plaintiff's counsel gets paid at all is still at risk as the
12 Defendant must still pay out the funds in installments. All of counsels' skill and experience
13 justify the requested rate. All class counsel in this case practice litigation with a focus on
14 representing employees in employment matters on class action representative cases.

15 One difficulty in determining the hourly rate of attorneys of similar skill and experience
16 in the relevant community is the scarcity of hourly fee-paying clients in class action litigation. As
17 a practical matter, few if any consumers pay attorneys' fees on an hourly basis for such extensive
18 litigation, and thus retainer agreements in such cases are based on a contingency fee relationship.
19 Although there is no customary billing rate, the nature of class action work should be strongly
20 considered by the court. Courts have upheld rates as high as \$450.00 per hour (in 1993) in
21 employment matters. (Adjusted for inflation, \$450 in 1993 equals \$973.27 in 2024) *Bihun v.*
22 *AT&T Information Systems, Inc.* (1993) 13 Cal. App. 4th 976, overruled on other grounds.
23 Plaintiff's counsel is only paid if they win, which in this case will result in payment over 1.5
24 after the case was originally filed. All of counsels' skill and experience justify the requested rate.
25 Class Counsel practices litigation with a focus on representing employees in employment matters
26 on class action cases (Supp Decl. Carney ¶27).

27 Further, California courts and the Ninth Circuit hold that the trial court in determining
28 whether to apply a multiplier should look at the case and its results as a whole. Historically,
California courts have approved multipliers of 1.5 to 4. See *Coalition for Los Angeles County*
Planning v. Board of Supervisors (1977) 76 Cal. App. 3d 241, 251 (multiplier of 2+); *Kern River*

1 *Public Access Committee v. City of Bakersfield* (1985) 170 Cal. App. 3d 1205, 1228 (multiplier
2 of 1.5); *Downey Cares v. Downey Community Development Commission* (1987) 196 Cal. App.
3 3d 983, 994 (multiplier of 1.5); *Sternwest Corp. v. Ash* (1986) 183 Cal. App. 3d 74, 75.

4 Furthermore, the Federal courts have applied multipliers ranging from 1.7 to 4.0, even when the
5 class action involved relatively routine issues. See *Behrens v. Wometco Enterprises, Inc.*
6 (S.D.Fla 1988) 118 F.R.D. 534, 549 (multiplier of 3); *Rievman v. Burlington Northern Railroad*
7 *Co.* (S.D.N.Y. 1987) 118 F.R.D. 29, 35 (noting multipliers between 3 and 4.5 are common).

8 Currently, Class Counsel have expended not less than 166.20 hours in the matter as of
9 October 30, 2024, with a combined lodestar of \$135,620.00 (Supp Decl. Carney, ¶25).

10 Therefore, under either the percentage of recovery method or lodestar cross check, Plaintiff's
11 counsels' requested attorneys' fees are reasonable and should be approved by this court.

12 **XIII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT**
13 **OF COSTS IN THE SUM OF UP TO \$10,000.00**

14 The request for reimbursement of costs is fair and reasonable. Plaintiff's counsel's total
15 costs as of the date of filing this motion are \$7,861.14, which does not include the \$500.00 in
16 anticipated costs through payment and final filing costs that are expected to be incurred. Further,
17 this cost figure does not include the claims administration costs of up to \$6,950.00. The parties
18 agreed to a cap on litigation costs of \$10,000.00. As such, Plaintiff's counsel agrees to seek only
19 \$10,000.00 in litigation costs. The costs are all litigation related costs (*Id.*). Furthermore, these
20 costs are in addition to the claims administration costs as stated.

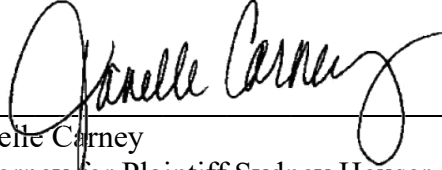
21 **CONCLUSION**

22 Plaintiff undertook the responsibility and duty of serving as a Class Representative
23 because she felt the treatment of herself, and her co-workers was unjust and brought this suit on
24 behalf of all California employees in order to benefit those workers whose rights were impinged
25 as were her own. Plaintiff did exactly that, undertaking significant action to bring this case to the
26 substantial benefit of class members, dedicating the time such responsibilities required of her,
27 and doing so at personal and financial risk to herself and her own future employment prospects.
28 Granting this service award further supports the public policy underlying the provision of such
awards, and the policies underlying the federal and state statutory enforcement schemes. For
these reasons, Plaintiff respectfully requests that the Court grant final approval of the class action

1 settlement and enter the order granting final approval and the proposed judgment, both lodged
2 concurrently herewith.

3 Date: October 30, 2024

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

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5 _____
6 Janelle Carney
7 Attorney for Plaintiff Sydney Houser
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