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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

MARK WISE, ROBERT MARTINEZ, and
WAVERLY LATOURETTE, individually,
and on behalf of other members of the
general public similarly situated,

Plaintiffs,

vs.

KIMPTON HOTEL & RESTAURANT
GROUP, LLC, a Delaware limited liability
company; KHRG CANARY LLC, a
Delaware limited liability company;
INTER-CONTINENTAL HOTELS
CORPORATION, a Delaware corporation;
INTERCONTINENTAL HOTELS GROUP
RESOURCES, LLC, a Delaware limited
liability company; IHG MANAGEMENT
(MARYLAND) LLC, a Maryland limited
liability company; INTERCONTINENTAL
HOTELS OF SAN FRANCISCO, INC., a
Delaware corporation; SIX CONTINENTS
HOTELS, INC., a Delaware corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: 37-2024-00008504-CU-OE-CTL

Assigned for All Purposes to:
Hon. Gregory Pollack
Dept. C-71

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND REQUEST
FOR ATTORNEY'S FEES AND COSTS**

Date: March 6, 2026
Time: 9:30 a.m.
Dept.: C-71

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1 **I. INTRODUCTION**

2 Plaintiffs and Class Representatives Robert Martinez, Mark Wise, and Waverly LaTourette
3 seek final approval of a non-reversionary class action settlement resolving wage and hour claims
4 on behalf of 6,857 individuals who worked for Defendants IHG Management (Maryland) LLC,
5 Inter-Continental Hotels Corporation; Intercontinental Hotels Group Resources, LLC,
6 Intercontinental Hotels of San Francisco, Inc., Six Continental Hotels, Inc., Kimpton Hotel &
7 Restaurant Group, LLC, and KHRG Canary LLC (collectively the "Defendants"), as non-exempt
8 employees in the Martinez/Wise Subclass and the LaTourette Subclass (as defined in the
9 Settlement Agreement). The proposed \$2,800,000 total settlement provides approximately
10 \$1,620,990 in cash payments to the Class, with an average award of about \$238.65. The remaining
11 balance will cover modest service awards to Plaintiffs, settlement administration costs, PAGA
12 civil penalties, and reasonable attorney's fees and costs. The parties and their counsel finalized the
13 settlement after extensive and thorough arms-length negotiations overseen by an experienced and
14 highly-regarded mediator and a federal Magistrate Judge. The Court conditionally certified the
15 Class for settlement purposes and preliminarily approved the settlement on October 24, 2025.
16 Since then, the Court-approved notice form was mailed to the Class Members on December 17,
17 2025, and they reacted very favorably to the settlement. As of the filing of this motion, there are
18 no objections, and only two class members have requested exclusion.

19 Class Counsel secured an excellent settlement with Defendants after nearly three
20 years of investigation, litigation, and settlement negotiation and administration, all
21 without any compensation for services rendered or costs expended. The class notice duly
22 informed the class members that Class Counsel would request attorney's fees not to
23 exceed 33.33% of the Gross Settlement Amount, along with reimbursement of actual
24 costs incurred litigating this matter. As of the filing of this motion, *not one Class Member*
25 *objected* to the proposed fee award. Consistent with the Settlement and Notice, Plaintiffs
26 now respectfully request the Court award Class Counsel's fees in the amount of
27 \$933,333.33 (33.33% of the GSA) and costs in the amount of \$74,166.66, as described in
28 the Declarations of Brandon Brouillette ("Brouillette Decl.") and Ronald H. Bae ("Bae
Decl."), filed herewith. The requested attorney's fees are well within the range of

1 reasonableness, especially considering the complex and risky nature of this litigation, the
2 contingent risk assumed, the two plus year period from initiation of the case to payment
3 and, when subjected to a lodestar crosscheck, results in a fee equal to the base lodestar
4 with a reasonable 1.31 upward enhancement.

5 Accordingly, on behalf of themselves and the Settlement Class, Plaintiffs respectfully
6 request the Court grant this motion, give full and final approval to the settlement, grant Class
7 Counsel's request for attorney's fees and costs, and enter judgment accordingly.

8 **II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

9 The factual background and procedural posture of these matters was addressed at length in
10 Plaintiffs' Motion for Preliminary Approval. To briefly remind the Court of underlying facts,
11 Defendants are part of a multinational hospitality company that operates under many hotel brand
12 names throughout California and the United States. Plaintiffs all worked for certain of the
13 Defendants in California as hourly-paid, non-exempt employees. [Brouillette Decl, ¶ 2.]

14 Plaintiffs collectively filed a total of six class action and PAGA representative actions
15 against Defendants. First, on December 28, 2023, Plaintiff Martinez filed a wage and hour class
16 action San Diego Superior Court (*Robert Martinez v. IHG Management (Maryland) LLC et al.*,
17 Case No. 37-2023-00056196-CU-OC-CTL), which case Defendants removed to the United States
18 District Court, Southern District of California, Case No. 3:24-cv-00210-L-DEB, on February 15,
19 2024. On February 23, 2024, Plaintiff Martinez filed a separate PAGA representative action in this
20 Court (*Robert Martinez v. IHG Management (Maryland) LLC et al.*, Case No. 37-2024-00008504-
21 CU-OE-CTL). [Brouillette Decl, ¶ 3.]

22 On December 28, 2023, Plaintiff Wise filed a wage and hour class action against Defendants
23 in the San Francisco Superior Court (*Mark Wise*, Case No. CGC-23-611350). On February 26,
24 2024, Defendants removed the Wise Class Action to the United States District Court, Northern
25 District of California, Case No. 3:24-cv-01161-AMO. On May 23, 2024, Plaintiff Wise filed a
26 separate PAGA representative action against Defendants InterContinental Hotels Group Resources,
27 LLC, IHG Management (Maryland) LLC, InterContinental Hotels of San Francisco, Inc., and Six
28 Continents Hotels, Inc., also in San Francisco Superior Court (Case No. CGC-24-614959). On June

1 20, 2024, Defendants filed a Motion to Stay Proceedings in the *Wise* Class Action, pursuant to the
2 first-to-file rule, as well as the Court’s inherent power to manage its docket and stay proceedings.
3 On September 30, 2024, the Court granted Defendants’ motion and stayed the *Wise* Class Action
4 until the Court ruled on class certification in the *Martinez* Class Action. [Brouillette Decl, ¶ 4.]

5 On March 22, 2024, Plaintiff LaTourette filed a PAGA-only representative action against
6 Defendants Kimpton Hotel & Restaurant Group, LLC and KHRG Canary LLC in the San Francisco
7 Superior Court (*LaTourette v. Kimpton Hotel & Restaurant Group et al.*, Case No. CGC-24-
8 613335). Subsequently, on March 26, 2024, Plaintiff LaTourette filed a wage and hour class action
9 against Defendants Kimpton Hotel & Restaurant Group, LLC and KHRG Canary LLC, also in the
10 San Francisco Superior Court (*LaTourette v. Kimpton Hotel & Restaurant Group et al.*, Case No.
11 CGC-24-613426). On May 15, 2024, Defendants removed the LaTourette Class Action to the
12 United States District Court, Northern District of California, Case No. 3:24-cv-02947-VC. On June
13 24, 2024, Plaintiff LaTourette and Defendants jointly filed a Stipulation to Stay Proceedings in the
14 LaTourette PAGA Action, which Stipulation was approved by the Court. [Brouillette Decl, ¶ 5.]

15 Once the pleadings were settled and the cases at issue, the Parties conducted an extensive
16 amount of formal and informal discovery, including exchanging Initial Disclosures in the federal
17 cases, written discovery, and multiple depositions. Ultimately, the Parties agreed to mediate on a
18 global basis, and further agreed to exchange additional informal discovery to facilitate a meaningful
19 mediation. In September 2024, the Parties participated in full-day mediation with Louis Marlin,
20 Esq., a respected wage and hour class action mediator but were unable to reach an agreement.
21 While the Parties continued to negotiate, they also participated in a Mandatory Settlement
22 Conference in the Martinez Class Action with U.S. Magistrate Judge the Hon. Daniel E. Butcher on
23 December 5, 2024. Following the MSC, the Parties reached an agreement to resolve all claims in
24 the six pending actions on a global basis. [Brouillette Decl., ¶¶ 6-7]. This Court preliminarily
25 approved the settlement on October 24, 2025.

26 Class Notices were mailed to Class Members on December 17, 2025, and Class
27 Members had until January 16, 2026 to opt out or object to the proposed settlement.
28 (Declaration of Arron Weisel (“Weisel Decl.”), ¶¶ 8, 13.)

1 **III. THE PROPOSED SETTLEMENT TERMS**

2 Under the settlement, Defendants will pay \$2,800,000 into a common fund, the Gross
3 Settlement Amount (“GSA”). Reasonable attorney’s fees of up to \$933,333.33 (33.33% of the
4 escalated GSA), actual litigation costs of \$74,166.66, modest enhancement awards to Plaintiffs of
5 up to \$10,000 each (\$30,000 total), settlement administration costs of \$41,510, and PAGA civil
6 penalties of \$100,000, all will be paid from the Gross Settlement Amount. The remainder of
7 approximately \$1,620,990 will be allocated among the Participating Class Members based on their
8 total weeks worked during the Class Period. No portion of the Gross Settlement Amount will revert
9 to any Defendant. [Brouillette Decl., ¶ 8.]

10 **A. Certification of the Settlement Class**

11 The Court conditionally certified a settlement class including the following two subclasses:

12 (1) “*Martinez/Wise* Subclass” consists of all current and former hourly-paid or non-
13 exempt employees who worked for Defendants IHG Management (Maryland) LLC,
14 Inter-Continental Hotels Corporation, or Inter-Continental Hotels Corporation,
15 InterContinental Hotels of San Francisco, Inc., or any of the Released Parties at any
16 of the IHG Hotels in California at any time during the period from August 8, 2021
17 through March 5, 2025; and

18 (2) “*LaTourette* Subclass” consists of all current and former hourly-paid or non-
19 exempt employees who worked for Defendants Kimpton Hotel & Restaurant Group,
20 LLC, KHRG Canary LLC, or any of the Released Parties at any of the Kimpton
21 Hotels in California at any time during the period from August 25, 2022 through
22 March 5, 2025.

23 The Settlement Administrator ultimately mailed class notices to 6,857 individuals
24 identified as members of the Class. [Weisel Decl., ¶ 8.] Nothing has changed to require
25 reconsideration of the Court’s certification of the Settlement Class.

26 Finally, the “Aggrieved Employees” for the PAGA claims are defined as all persons
27 employed by Defendants in California between June 6, 2024 through March 5, 2025. There are
28 4,402 Aggrieved Employees. [Weisel Decl., ¶ 8.]

1 **B. The Benefit Conferred on the Settlement Class**

2 This is a cash settlement that does not require Participating Class Members to submit a claim
3 form to receive their settlement share. Participating Class Members will receive their settlement
4 checks automatically via First Class U.S. Mail. Ten percent of each settlement share will be
5 allocated to wages and the remaining ninety percent will be allocated to non-wage damages,
6 penalties and interest. Defendants will pay any and all applicable employer-side payroll taxes
7 separately and in addition to the Gross Settlement Amount. Subject to the Court's approval, any
8 amounts not claimed (because a class member does not cash his or her settlement check) will be
9 forwarded to the State Controller's Unclaimed Property Fund in the name of the respective Class
10 Member. [Brouillette Decl., ¶ 9.]

11 Each Participating Class Member will receive a share of the Net Settlement Amount based
12 on his or her total weeks worked for Defendants during the Class Period while employed in a non-
13 exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated
14 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium
15 wages for missed meal and rest breaks, unreimbursed expenses, and potential statutory penalties
16 under applicable law. These methods are intended to ensure each Class Member receives a portion
17 of the available settlement funds corresponding to the relative value of his or her potential claims.
18 The proposed allocation provides a reasonable way to compensate Class Members based on the
19 amount of time they worked for Defendants and the number of instances they allegedly missed a
20 meal break and/or rest break, lost vacation pay, etc. [Brouillette Decl., ¶ 10.]

21 The average class settlement award will be approximately \$238.65, and the highest award
22 will be about \$778.84. The average PAGA award will be about \$5.68. [Weisel Decl., ¶¶ 19, 21.]

23 **C. Settlement Administration**

24 Simpluris, Inc., as the Court-approved Settlement Administrator, mailed the Notice
25 Packet to the Class members after making all reasonable effort to ascertain the best mailing
26 address, including running each address through the National Change of Address database and
27 "skip-tracing" any Notice Packets returned as undeliverable. [Weisel Decl., ¶¶ 3-9.] The Class
28 Notice, previously approved by the Court, duly informed Class Members of the settlement

1 terms, including the estimated relief each Class Member will receive, the amounts to be
2 requested for attorney's fees and the class representative enhancement awards, and the right to
3 opt out of or object to the settlement. [Weisel Decl., ¶ 8; Exh. A.] Simpluris mailed 6,857
4 Notice Packets on December 17, 2025. [Weisel Decl., ¶ 8.] Ultimately, 324 Notice Packets
5 were deemed undeliverable, representing a 95.3% success rate. [Weisel Decl., ¶ 9.] The
6 response window for opting out of or objecting to the settlement expired on January 16, 2026.
7 [Weisel Decl., ¶ 13.] As of the filing of this motion, Simpluris has received only two requests
8 for exclusion (for a 99.99% participation rate), and zero objections to the settlement. No
9 disputes have been submitted regarding the information used to calculate settlement shares.
10 [Weisel Decl., ¶¶ 14-16].

11 **D. Release of Claims**

12 All Participating Class Members will release Defendants and the Released Parties from all
13 claims alleged in the Lawsuits, or that could have been brought based on the factual allegations in
14 the Lawsuits during the Class Period. The release is limited to the claims that were actually pleaded
15 or could have been pleaded based on the alleged facts in the operative complaint. Only Plaintiffs are
16 entering into a full general release of all claims and waiver of Civil Code section 1542. [Brouillette
17 Decl., ¶ 11.]

18 **E. PAGA and Notice to the LWDA**

19 As noted, the Parties allocated \$100,000 to resolution of Plaintiffs' alleged claims under
20 PAGA, and Plaintiffs request the Court approve that amount as fair, reasonable, and adequate, and
21 consistent with PAGA's underlying purposes. Consistent with PAGA, \$75,000 of that amount will
22 go to the LWDA for the State's share of the civil penalties, while the remaining \$25,000 will be
23 distributed pro rata to the 4,402 eligible Aggrieved Employees. Prior to filing this motion,
24 Plaintiffs provided notice of the proposed settlement of the PAGA claims and the approval hearing
25 to the LWDA. [Brouillette Decl., ¶ 12; Exh. 1.]

26 **IV. ARGUMENT**

27 The law favors settlement, particularly in class actions where substantial resources can
28 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.

1 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
2 (9th Cir. 1992) 955 F.2d 1268, 1276, *cert. denied*, 506 U.S. 953; Van Bronkhorst v. Safeco
3 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
4 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
5 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
6 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
7 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
8 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
9 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, et seq. Review is accomplished through a
10 two-step process intended to determine whether, under the totality of circumstances, the
11 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
12 Cal.App.4th at 245.

13 On a motion for final approval, the trial court is charged with determining whether, in
14 light of the total circumstances of the action and the response of the class members to the
15 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
16 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
17 determination and may consider a number of relevant factors, including: the strength of
18 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
19 further litigation; the amount offered in settlement; the extent of discovery and stage of the
20 proceedings; the experience and opinion of counsel; and the reaction of class members to the
21 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,
22 courts generally apply a presumption of fairness to a proposed class action settlement when:
23 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
24 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
25 similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802;
26 Wershba, 91 Cal.App.4th at 245.

27 The proposed settlement of this action warrants final approval under the standards
28 summarized above. The settlement is fair, reasonable and adequate, and represents a favorable

1 resolution of highly disputed claims. Further, the settlement was overwhelmingly approved by
2 the class members, as there were no objections and only two class members opted out.

3 **A. The Settlement Is the Product of Arm's-Length, Informed Negotiations**

4 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
5 was reached following arm's-length negotiations presided over by Louis Marlin, Esq., a highly
6 respected and well-known mediator with extensive experience mediating wage and hour class
7 actions, as well as the Mandatory Settlement Conference with federal Magistrate Judge the Hon.
8 Daniel E. Butcher. [Brouillette Decl., ¶ 7.] Moreover, Plaintiffs and their counsel were well-
9 informed about the facts and the law, and counsel at Crosner Legal, PC and Aequitas Legal Group
10 all have years of litigation experience, including litigating wage and hour class actions. Plaintiffs'
11 counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling
12 the matter. [Brouillette Decl., ¶¶ 38-56; Bae Decl., ¶¶ 4-11.] Defendants likewise were represented
13 by highly-qualified and experienced defense counsel. Both sides advocated vigorously for their
14 clients, and nothing was "left on the table."

15 **B. The Class Reacted Favorably to the Settlement**

16 The settlement was well-received by the class. As of the filing of this motion, no
17 objections have been filed, and only two Class Members requested exclusion. [Weisel Decl., ¶¶
18 14-15.] As many courts recognize, class member reaction to the settlement is one of the most
19 important factors to consider in determining if final approval should be granted. Mandujano v. Basic
20 Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); *see also* In re: American Bank Note
21 Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled that the reaction of the
22 class to the settlement is perhaps the most significant factor to be weighed in considering its
23 adequacy") (internal quotation marks omitted).

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

26 Prior to mediation and the MSC, the Parties engaged in extensive formal and informal
27 discovery to facilitate settlement discussions. As a result, Plaintiffs reviewed documents and
28 information regarding Defendants' payroll practices, pay stubs and time records for a sampling of

1 class members, meal and rest break policies, etc., and information from Defendants regarding class
2 size and breakdown of job positions, work weeks, rates of pay, and other information used to
3 formulate a damages model. Plaintiffs also deposed Defendants' corporate designees. Plaintiffs'
4 counsel are confident they obtained sufficient information to enable them to understand the law and
5 facts of this case and make an informed decision regarding the proposed settlement and whether it
6 is in the best interests of the class. [Brouillette Decl., ¶¶ 6, 13-14.]

7 Using that data, Plaintiffs ran various calculations and estimated Defendants' likely
8 exposure, and then substantially discounted the value of these claims in light of Defendants' multi-
9 layered defenses on both class certification and on the merits, and the multiple and considerable
10 risks posed by proceeding with the litigation. While Plaintiffs believe firmly in the merits of the
11 claims and that the claims could be certified and won at trial, there is no guarantee that Plaintiffs
12 would prevail at the certification stage or on the merits of the class claims. There were a number of
13 risks, uncertainties, and developments in the case which limited Plaintiffs' ability to obtain a
14 favorable result for themselves and the class at certification and trial. These risks are in addition to
15 the ordinary litigation-related risks which include a risk that Plaintiffs would be unable to certify
16 the claims, a risk that even successfully certified claims may be decertified during merits discovery,
17 and a risk that Plaintiff would not prevail at trial. Thus, even if this case was certified, a total victory
18 for the Class was far from guaranteed, and achieving victory at trial and surviving any post-trial
19 motions or appeals would have come at great litigation costs and expenses to the Class. These factors
20 also support a finding that the settlement is fair and reasonable. [Brouillette Decl., ¶¶ 15-35.]

21 The proposed settlement provides significant monetary relief to the Class Members for the
22 alleged wage-and-hour violations at issue in this case. Plaintiffs' Counsel estimate the Gross
23 Settlement Amount represents approximately 23.85% of what Plaintiffs view as Defendants' total
24 realistic potential exposure. Such recovery is within the range of reasonableness as Defendants
25 vigorously denied liability and defended against Plaintiffs' claims and raised numerous
26 certification and merits defenses. Defendants further argued that various collective bargaining
27 agreements and arbitration agreements would hamper Plaintiffs' efforts to obtain class
28 certification, and that Defendants have maintained lawful policies and procedures. [Brouillette

1 Decl., ¶ 30.]

2 For example, Defendants argued that any donning and doffing time was not compensable
3 because employees were, by written policy, allowed to change into and out of their uniforms at
4 home. Defendants cited several cases in support of this legal principle, including Bamonte v. City
5 of Mesa (9th Cir. 2010) 589 F. 3d 1217, 1225-26, and Dager v. City of Phoenix, (9th Cir. 2010)
6 380 Fed.App. 688, 689. Defendants similarly noted that their written policies prohibited
7 employees' use of personal cell phones at work, further weakening Plaintiffs' claim that
8 employees should be reimbursed for cell phone expenses based on a uniform requirement that they
9 utilize their cell phones at work. Defendants also noted that Plaintiffs' rounding claims only
10 applied to a few hotels, and many employees benefited (i.e. received more pay) as a result of the
11 rounding practice. Plaintiffs' vacation pay claims only applied to a small group of employees, and
12 the challenged vacation pay practice was in accordance with specific union rules as part of the
13 collective bargaining agreement at each hotel. In addition, Defendants argued no wage statement
14 or waiting time penalties were due based on the "good faith dispute" defense. [Brouillette Decl.,
15 ¶¶ 15-29.]

16 Defendants also presented evidence in the form of putative class member declarations.
17 Prior to the mediation, Defendants obtained sixteen declarations from employees at seven IHG
18 hotels, and argued that these declarations established: (1) employees did not work off the clock
19 and understood hotel policy prohibited off-the-clock work; (2) employees uniformly received
20 timely, compliant off-duty meal and rest breaks, and were allowed to leave the hotels for their
21 breaks; (3) employees were not denied meal or rest breaks, nor were they discouraged from taking
22 them; (4) employees had the option to change into and out of their uniforms at home, and
23 routinely did so; and (5) employees were not required to utilize their personal cell phones for work
24 purposes. [Brouillette Decl., ¶ 32.]

25 Defendants further argued that individualized fact and legal issues would predominate on
26 all of Plaintiffs' class claims and that a trial on the PAGA claims would be unmanageable.
27 Defendants emphasized that courts routinely deny class certification in cases involving meal and
28 rest break claims, cell phone reimbursement claims, and off-the-clock claims. Defendants' time

1 records also showed a meal break compliance rate at or above 85-95% at most hotels (and the
2 sample records produced by Defendants showed a meal break compliance rate above 91%), which
3 Defendants argued would make certification of the meal break claims very difficult. Any potential
4 class damages sought by Plaintiffs were also severely mitigated by the fact that most putative class
5 members had signed arbitration agreements with class waivers. While not insurmountable in
6 Plaintiffs' view, these defenses and arguments would have made it far more difficult for Plaintiffs
7 to prevail at class certification and trial. [Brouillette Decl., ¶ 33.]

8 Thus, Defendants raised various and multi-layered defenses to each of Plaintiffs' claims,
9 any one of which, if successful, could have derailed Plaintiffs' case. And Defendants vowed to raise
10 all these defenses in connection with class certification and at trial. Accordingly, Plaintiffs faced
11 risky issues going forward with litigation, and it could have taken years to realize any recovery in
12 this action along with the possibility of post-trial appeals. In addition to the merits defenses and
13 arguing trial would be unmanageable, Defendants also intended to raise additional defenses on
14 damages. [Brouillette Decl., ¶ 34.]

15 Although Plaintiffs and their counsel believe Plaintiffs could have prevailed, there was no
16 such guarantee. When the risks of overcoming manageability and class certification defenses,
17 prevailing at trial on the merits on all claims, and appellate risks, all are factored into the equation,
18 the settlement value is reasonable and supported. Of course, to obtain anywhere near the
19 maximum recovery, Plaintiffs would have to shoot the moon and win both liability and damages
20 on all claims for every single pay period at issue, which outcome, for the reasons discussed, is
21 unlikely. Given Defendants' various procedural and merits defenses, the proposed settlement is
22 reasonable. [Brouillette Decl., ¶ 35.]

23 Importantly, the mere fact that a settlement does not provide the same recovery as might be
24 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
25 adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the
26 settlement process...even if the relief afforded by the proposed settlement is substantially
27 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
28 settlement because the public interest may indeed be served by a voluntary settlement in which

each side gives ground in the interest of avoiding litigation”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court”). Importantly as well, the proposed settlement is non-reversionary and will provide immediate benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at <http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf> (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

V. PLAINTIFFS’ ENHANCEMENT AWARDS

Pursuant to the terms of the settlement, Plaintiffs seek reasonable incentive awards of \$10,000 each (\$30,000 total) for their service in bringing these claims on behalf of the Class. The requests are reasonable given the risks they undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these claims, Plaintiffs helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendants’ litigation costs. Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, assuming a risk of discrimination by future prospective employers. As set forth in more detail in their declarations submitted at preliminary approval, among taking many other actions assisting in the successful litigation of this case, Plaintiffs provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. [Brouillette Decl., ¶ 36; Bae Decl., ¶¶ 12-

13.] Finally, there are no class member objections submitted with respect to the amounts Plaintiffs propose to receive. [Weisel Decl., ¶ 12.] Accordingly, the requested enhancement payments to each Plaintiff are appropriate and justified as part of the settlement.

VI. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to Simpluris for its services as the Settlement Administrator. As set forth in the Declaration of Arron Weisel, Simpluris has performed and will continue to perform its required duties through final distribution of the settlement funds, and incurred \$41,510 in fees and expenses. [Weisel Decl., ¶ 22; Exh. B.] Accordingly, Plaintiffs respectfully request the Court approve payment of \$41,510 to Simpluris from the GSA.

[Brouillette Decl., ¶ 37.]

VII. ATTORNEY'S FEES AND COSTS

A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be Approved

This Court has discretion over the amount of attorneys' fees awarded and court approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the marketplace for cases involving significant contingent risk, such as this one. Deposit Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S. 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed private bargaining, if it were truly possible, might have reached" in determining a reasonable fee, and a fee award should approximate a "range of fees freely negotiated in comparable litigation"). Here, Class Counsels' request for attorney's fees and costs is reasonable and justified by the work performed, the benefits obtained, and the contingent risk assumed.

As addressed in detail above, at the time the parties reached the tentative settlement, success by Plaintiffs and the putative class was far from certain. Plaintiffs faced a real risk that some or all the claims would not be certified for class treatment, as Defendants had strong arguments that their compensation policies were legal and properly compensated the

1 class members. Even if Plaintiffs certified some or all of the claims and ultimately prevailed
2 on the merits, it undoubtedly would have taken several more years to realize any recovery
3 while they pursued class certification, trial, and a certain appeal. [Brouillette Decl., ¶¶ 15-35.]

4 Nonetheless, Plaintiffs succeeded and secured the relief they set out to obtain, and the
5 settlement provides substantial cash payments to Class Members, with an average award of
6 about \$238, and with a maximum award of over \$778. Importantly as well, the Class
7 Members have been overwhelmingly supportive of the Settlement – as of the filing of this
8 motion, there are no objections to the settlement and only two individuals opted out. [Weisel
9 Decl., ¶¶ 14-15.]

10 **B. The Requested Fee Award Is Reasonable and Appropriate**

11 The United States Supreme Court has ruled the parties to a class action properly may
12 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
13 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
14 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
15 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
16 should not result in a second major litigation. Ideally, of course, litigants will settle the
17 amount of a fee." The United States Supreme Court has reemphasized this policy and further
18 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
19 (1984) 465 U.S. 886, 902 n.19.

20 As part of the Settlement, Defendant agreed not to object to an award of no more than
21 33.33% of the GSA for attorney's fees, or \$933,333.33. Such a fee is commensurate with
22 what the market would provide for similar services and the Court therefore can most certainly
23 enforce the agreement. As California's Court of Appeal has instructed:

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

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

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

6 C. **Class Counsels' Fees are Justified When Calculated as a Percentage of the**
7 **Common Fund**

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

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

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

21 Indeed, both California and federal courts have long recognized an appropriate method
22 for determining the award of attorney's fees is based on a percentage of the total value of
23 benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,
24 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.
25 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
26 recovered operates to "spread litigation costs proportionately among all the beneficiaries so
27 that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

28 In determining a reasonable common fund fee award, courts should also consider the
fact that fees serve as an economic incentive for lawyers to bring class action litigation to
achieve increased access to the judicial system for meritorious claims and to enhance

1 deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without
2 prosecution on a contingent basis and use of the class action mechanism, the courthouse door
3 would effectively be closed to most class members due to the relatively small size of their
4 individual claims in relation to the enormous time and cost associated with class action
5 litigation.

6 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
7 this action of no more than 33.33% of the total amount recovered by the Class via the lawsuit,
8 or \$933,333.33. The percentage requested is justified for the reasons set forth further below,
9 and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review
10 of class action settlements shows that courts have historically awarded fees in the range of 20
11 to 50 percent, depending upon the circumstances of the case. In re Warner Communications
12 Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in
13 common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d
14 ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award
15 from a common fund in order to assure that the fees do not consume a disproportionate part of
16 the recovery obtained for the class, although somewhat larger percentages are not
17 unprecedented.").

18 **D. A Lodestar Cross-Check Also Supports Class Counsels' Fee Request**

19 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
20 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
21 an objective measure of the work performed into the calculation of a reasonable attorney fee."
22 Laffitte, 1 Cal.5th at 504. Here, Class Counsel collectively spent 925 hours of time on this
23 matter, resulting in a reasonable aggregate lodestar of \$710,675.

24 In pursuing this matter, Class Counsel incurred total attorney's fees of \$710,675. The
25 lodestar is based on an eminently reasonable number of hours (925 attorney hours) worked to
26 litigate these complicated and hard-fought matters to a successful conclusion, and the requested
27 attorney hourly rates are reasonable and comport with hourly rates charged by other attorneys with
28 similar experience in this practice area in California. [Brouillette Decl., ¶¶ 38-56; Bae Decl., ¶¶ 4-

11, 14-16.] On a lodestar basis, the fee request of \$933,333.33 results in a multiplier of 1.31, which is a modest enhancement entirely in line with California law. Indeed, California courts routinely approve multipliers in the 2-4 range to compensate for the time and risk of class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).) Class Counsel submits that the requested _____ multiplier effectively operates to show that the percentage fee request is reasonable considering the challenges presented in this contingency fee matter, and appropriately compensates Class Counsel for the contingent risk assumed and delay in payment during the 2+ years counsel has been representing Plaintiffs. Thus, the multiplier results in a fee constituting a fair return on the contingency.

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

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

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

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1 **1. The Results Achieved.**

2 Class Counsel obtained an excellent result in this case for the Class Members. The
3 Settlement provides real monetary benefits to the Class Members, and the Settlement is
4 particularly advantageous to the Class Members because the proceeds will be distributed
5 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
6 Considering many individual claims would be very modest and would not be cost-effective to
7 pursue successfully, the Settlement provided them with fair compensation for their claims.
8 Moreover, the absence of any objection to either the Settlement or the attorney's fee request
9 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as no Class
10 Member provided written objections, and only two Class Members opted out. Additionally,
11 the settlement amounts to a substantial percentage of the maximum value of the amount the
12 Class might have obtained if it had tried the case and recovered on all theories seeking
13 recovery of wages and penalties. "It is well-settled law that a cash settlement amounting to
14 only a fraction of the potential recovery does not per se render the settlement inadequate or
15 unfair." In re Omnivision Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

16 **2. Class Counsel Bore Considerable Risk.**

17 At the time of filing the complaint, Class Counsel recognized that they would have to
18 expend a substantial amount of time and advance significant costs to prosecute a class action
19 suit with no guarantee of compensation or reimbursement, in the hope of prevailing against
20 a sophisticated company represented by first-rate attorneys. Despite their belief in the
21 validity of Plaintiffs' claims, they also knew they faced substantial risks of class
22 certification and the ability to prove class-wide and individual damages. In light of the highly
23 uncertain nature of this suit, Class Counsel also bore the risk that Defendants would dig in
24 and bury Class Counsel in paper. Given the small size of Class Counsels' respective firms,
25 not receiving any compensation for several years while simultaneously advancing litigation
26 costs posed considerable risk and difficulty. [Brouillette Decl., ¶¶ 57-58.]

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1 **3. The Skill Required and the Quality of Work.**

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

10 **4. The Contingent Nature of the Fee and Risk Assumed**

11 There is a substantial difference between the risk assumed by attorneys being paid
12 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
13 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249,
14 1256. The attorney working on a contingent basis can only log hours while working
15 without pay towards a result that will hopefully entitle him to a market fee considering
16 the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee
17 attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this
18 risk in this all or nothing contingent fee case wherein the necessity and financial burden
19 of private enforcement makes the requested award appropriate.

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

1 Here, the contingent fee practices of Plaintiffs' counsel simply do not accommodate
2 the investment of unnecessary time in a case, and the adverse resolution of any one of several
3 difficult issues present in this matter could have doomed the entire effort. As discussed, the
4 attorney's fees in this case were not only contingent but fairly risky, and there was always a
5 chance Plaintiffs' counsel would receive nothing for any number of reasons. [Brouillette
6 Decl., ¶¶ 57-58.] Accordingly, the contingent nature of the fee and the financial burdens on
7 Class Counsel and Plaintiffs also support the fee requested.

8 5. Awards in Other Cases

9 As discussed, the attorney's fees requested by Class Counsel are within the range of
10 fees awarded in comparable cases, as cross-checked against the lodestar method in light of the
11 contingent risk assumed, the delay in payment, the result achieved, and the overall quality of
12 the representation. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp.
13 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50
14 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of
15 the fund is the upper limit on a reasonable fee award from a common fund in order to assure
16 that the fees do not consume a disproportionate part of the recovery obtained for the class,
17 although somewhat larger percentages are not unprecedented.")

18 F. Class Counsels' Costs and Expenses are Reasonable

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

1 As explained in the Brouillette and Bae Declarations, Class Counsel incurred a
2 total of \$74,166.66 in expenses in connection with this litigation. These expenses include
3 the amounts paid for court filing fees, service of process, mediation fees, deposition
4 costs, and expert witness costs, all of which are costs normally billed to and paid by the
5 client. These costs were reasonably incurred in the prosecution of this matter and it is
6 respectfully requested that the Court authorized they be reimbursed in full. [Brouillette
7 Decl., ¶¶ 59-60; Bae Decl., ¶ 17, Exh. 4.]

8 **VIII. CONCLUSION**

9 For all the foregoing reasons, Plaintiffs Robert Martinez, Mark Wise, and Waverly
10 LaTourette respectfully request that the Court grant this motion and grant final approval of the
11 proposed class action settlement. Plaintiffs further request the Court approve payment of the
12 Settlement Administrator's fees and expenses, approve the requested class representative
13 enhancement payments, approve the award of attorney's fees and costs as requested, and enter
14 judgment in this action. Finally, Plaintiffs request the Court set a compliance hearing for March 5,
15 2027, or a later date convenient for the Court.

16 Dated: February 10, 2026

CROSNER LEGAL, P.C.
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19 _____
20 Brandon Brouillette
21 Attorneys for Plaintiffs ROBERT MARTINEZ,
22 MARK WISE, and WAVERLY LATOURETTE
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