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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**

11
12 ARTHUR QUESADA, as an individual and
on behalf of all others similarly situated,

13
14 Plaintiff,

15 v.

16 XPDEL, INC., a California Corporation
17 and DOES 1-100, inclusive, ADVATIX,
18 INC., a Delaware Corporation, and DOES
1-100, inclusive,

19 Defendants.

Case No.: 23CV031688

Assigned for All Purposes to:
Hon. Michael Markman
Dept. 23

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

Date: June 10, 2025
Time: 10:00 a.m.
Dept. 23

Reservation No.:

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Arthur Quesada seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 384
4 individuals employed by Defendant XPDEL, Inc. (“XPDEL” or Defendant”) in California and
5 classified as non-exempt and who worked for Defendant during the Class Period of April 21,
6 2019 to December 11, 2023 (after application of the escalator clause the Class Period was
7 shortened). The proposed \$175,000 total settlement provides about \$66,144 in cash payments to
8 the Class, with an average award of about \$172, plus additional amounts payable under PAGA.
9 The remaining balance will cover a modest service award to Plaintiff, settlement administration
10 costs, civil penalties to the state, and reasonable attorney’s fees and costs. The parties and their
11 counsel finalized the settlement after extensive and difficult arms-length negotiations overseen
12 by an experienced and highly-regarded mediator. The Court conditionally certified the Class and
13 preliminarily approved the settlement on December 11, 2024. Since then, the Court-approved
14 notice form was mailed to the Class Members on March 3, 2025, and they have reacted very
15 favorably to the settlement. As of the filing of this motion, there are no objections and no Class
16 Members have requested exclusion.

17 Class Counsel secured an excellent settlement with Defendant after extensive
18 investigation, litigation, and settlement negotiation and administration, all without
19 any compensation for services rendered or costs expended. The class notice duly
20 informed the class members that Class Counsel would request attorney’s fees not to
21 exceed one-third of the Gross Settlement Amount, or \$58,333.33, along with
22 reimbursement of no more than \$15,000 for actual costs incurred litigating this matter.
23 As of the filing of this motion, *not one Class Member objected* to the proposed fee
24 award. Consistent with the Settlement and notice, Plaintiff now respectfully requests
25 the Court award Class Counsel's fees in the amount of \$58,333.33 and costs in the
26 amount of \$14,522.07, as described in the Declaration of Brandon Brouillette
27 (“Broillette Decl.”) filed herewith. The requested attorney’s fees are well within the
28 range of reasonableness, especially considering the complex and risky nature of this

1 litigation, the contingent risk assumed, the nearly two-plus year delay in payment and,
2 when subjected to a lodestar crosscheck, reflect an award that is actually less than the
3 base lodestar.

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

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

8 Defendant XPDEL is a third-party fulfillment and logistics company specializing in providing
9 supply chain solutions for both business to business and direct to consumer companies. Plaintiff worked
10 for Defendant as an hourly paid, non-exempt delivery associate from about May to November 2021.

11 [Brouillette Decl., ¶ 2.]

12 Plaintiff alleges a number of wage and hour violations by Defendant. First, he alleges a
13 failure to pay for all hours worked as he and other class members had to continue working after
14 clocking out for their meal breaks, which time was neither recorded nor paid for. For the same
15 reason, he alleges XPDEL failed to provide all required meal and rest breaks, and that
16 Defendant had a practice of "auto-deducting" 30 minute meal periods even though employees
17 continued working while purportedly on a lunch break. Plaintiff also alleges XPEDL failed to provide
18 second meal periods on shifts of 10+ hours, and further failed to provide fully compliant meal periods
19 before the end of the fifth hour of work and pay meal period premiums when required. He further alleges
20 rest break violations based on a non-compliant written policy and failure to provide all required rest
21 breaks. Lastly, he alleges Defendant failed to reimburse employees for use of their personal cellular
22 devices for company business. [Brouillette Decl., ¶ 3.]

23 Based on these allegations, on April 21, 2023, Plaintiff filed his class action complaint alleging
24 (1) failure to pay minimum wage for all hours worked (Labor Code §§ 1194, and 1194.1); (2) failure to
25 pay overtime wages (Labor Code § 510); (3) failure to provide meal periods (Labor Code §§ 512 and
26 226.7); (4) failure to authorize or permit rest periods (Labor Code § 226.7); (5) failure to provide
27 complete and accurate wage statements (Labor Code § 226); (6) failure to timely pay all wages due
28 (Labor Code §§ 201-204); and (7) failure to reimburse business expenses (Labor Code § 2802); and (8)

Unfair Business Practices (Bus. & Prof. Code § 17200, *et seq.*). After notice to the LWDA and exhausting administrative remedies, Plaintiff filed an amended complaint on August 5, 2024 adding PAGA claims based on the same alleged Labor Code violations. The First Amended Complaint is the operative pleading for purposes of settlement. [Brouillette Decl., ¶ 4.]

XPDEL has at all times denied Plaintiff's allegations and maintained its meal and rest break and payroll policies and procedures comply with California law, that it paid employees for all hours worked, and that provided employees with required meal and rest breaks on a fully compliant basis. XPDEL also argued there would be no need for employees to use their personal phones for any work-related purposes. Additionally, XPDEL strongly contends the case cannot be maintained as a class action, arguing for example that to the extent class members missed meal and/or rest breaks, that such breaks were non-compliant, or that class members had to use their own phones for work it was intermittent and infrequent and evidence of such missed breaks or phone use would be anecdotal, and therefore individualized issues would predominate. [Brouillette Decl., ¶ 5.]

After Plaintiff filed his complaint, the Parties met and conferred on discovery, potential law and motion, and other case management issues, and ultimately agreed to attempt early mediation. The Parties also engaged in extensive informal discovery to facilitate an exchange of information necessary to engage in a meaningful mediation. The Parties then engaged Daniel Turner, Esq., a highly respected mediator with extensive wage and hour class action experience and, in December 2023, participated in a full day mediation with Mr. Turner. By the end of the day, the Parties were able to reach agreement on all major issues. [Brouillette Decl., ¶¶ 6-7.] The Court granted preliminary approval to the settlement on December 11, 2024.

Class Notices were mailed to class members on March 3, 2025, with a 45-day window (to April 17, 2025) for class members to opt out or object to the proposed settlement. [Declaration of Lluvia Islas ("Islas Decl."), ¶¶ 5, 8-10.]

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, XPDEL will pay \$175,000 into a common fund, the Gross Settlement Amount ("GSA"), in two equal payments approximately six months apart. Attorney's

1 fees of up to \$58,333.33 (1/3 of the GSA), litigation costs of up to \$15,000 (only \$14,522.07 is
2 requested), settlement administration costs of \$10,000, a service award to Plaintiff of no more
3 than \$10,000, and PAGA civil penalties of \$16,000, all will be paid from the GSA. The balance
4 of around \$66,144 will be allocated pro rata to the Class Members based on their weeks worked
5 during the Class Period. No portion of the GSA will revert to XPDEL. [Brouillette Decl., ¶ 8.]

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

7 The Court conditionally certified a settlement class including all individuals employed by
8 XPDEL in California and classified as non-exempt and who worked for Defendant during the
9 Class Period of April 21, 2019 to December 11, 2023.¹ The Settlement Administrator ultimately
10 mailed class notices to 384 individuals identified as members of the class. [Islas Decl., ¶ 5.]
11 Nothing has changed to warrant reconsideration of the Court's certification of the class for
12 settlement purposes.

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

14 As noted, the settlement obligates XPDEL to pay \$175,000 to resolve the Settlement
15 Class's claims, inclusive of attorney's fees and costs. At least \$66,144.60 from the GSA will be
16 distributed to the Participating Class Members. This is a cash settlement that does not require
17 Participating Class Members to submit a claim form to receive their settlement share.
18 Participating Class Members will receive their settlement checks automatically via First Class
19 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
20 eighty percent will be allocated to penalties and interest, which allocation is consistent with
21 XPDEL's potential liability. XPDEL will pay any and all applicable employer-side payroll taxes
22 separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed
23 (because a class member does not cash their settlement check) will be forwarded to the East Bay
24 Community Law Center as the proposed *cy pres* beneficiary. [Brouillette Decl., ¶ 9.]

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28 ¹ As noted in the Islas Declaration at Paragraph 12, the Settlement Agreement's Escalator Clause was triggered, and Defendant elected to shorten the Class Period to December 11, 2023.

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked in California as a non-exempt employee during the Class Period. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and rest breaks, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a settlement award corresponding to the relative value of their potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for XPDEL and the amount unpaid wages, the number of missed meal breaks and/or rest breaks, etc. [Brouillette Decl., ¶ 10.]

The average class award will be approximately \$172, and the awards will range from approximately \$10 to \$1,780. The average PAGA award will be about \$17, and highest PAGA award will be about \$95. [Islas Decl., ¶¶ 14-15.]

C. Settlement Administration

Phoenix Settlement Administrators, as the Court-approved Settlement Administrator, mailed the Notice Packet to the Class members after making all reasonable effort to ascertain the best mailing address, including running each address through the National Change of Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Islas Decl., ¶¶ 3-7.] The Class Notice, previously approved by the Court, duly informed Class Members of the settlement terms, including the estimated relief each Class Member will receive, the amounts to be requested for attorney's fees and the class representative enhancement awards, and the right to opt out of or object to the settlement. [Islas Decl., ¶ 5, Exh. A.] Phoenix mailed 384 Notice Packets on March 3, 2025. [Islas Decl., ¶ 5.] Ultimately, on 4 Notice Packets were deemed undeliverable, representing a 98.9% success rate. [Islas Decl., ¶ 7.] The 45-day response window for objecting to the settlement expired on April 17, 2025. [Islas Decl., ¶¶ 8-10.] As of the filing of this motion, Phoenix has received zero requests for exclusion (for a 100% participation rate), and zero objections to the settlement. No disputes were submitted regarding the information used to calculate class member settlement shares, which dispute has been resolved. [Islas Decl., ¶¶ 8-10.]

1 **D. Release of Claims**

2 All Participating Class Members will release XPDEL and the Released Parties from all
3 claims alleged in the operative complaint, or that could have been brought based on the factual
4 allegations in the complaint during the Class Period, including claims under PAGA. The release
5 is limited to the claims that were actually pleaded or could have been pleaded based on the
6 alleged facts in the operative complaint. [Brouillette Decl., ¶ 11.]

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

8 As noted, the Parties allocated \$16,000 to resolution of Plaintiff's alleged claims under
9 PAGA, and Plaintiff submits that amount is fair, reasonable and adequate, and consistent with
10 PAGA's underlying purposes. Consistent with PAGA, \$12,000 of that amount will go to the
11 LWDA for the State's share of the civil penalties, while the remaining \$4,000 will be distributed
12 pro rata to the 233 eligible Aggrieved Employees. Prior to filing this motion, Plaintiff provided
13 notice of the proposed settlement of the PAGA claims and the approval hearing to the LWDA.
14 [Brouillette Decl., ¶ 12; Exh. 1.]

15 **IV. ARGUMENT**

16 **A. Standard of Review for a Class Action Settlement**

17 The law favors settlement, particularly in class actions where substantial resources
18 can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg &
19 A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of
20 Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v.
21 Safeco Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951)
22 37 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not
23 unjustly compromised, the settlement of a class action requires court approval. Cal. Rule of
24 Court 3.769; Dunk v. McCoy Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v.
25 Apple Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to
26 protect against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
27 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
28 two-step process intended to determine whether, under the totality of circumstances, the

1 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
2 Cal.App.4th at 245.

3 On a motion for final approval, the trial court is charged with determining whether,
4 in light of the total circumstances of the action and the response of the class members to the
5 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
6 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
7 determination and may consider a number of relevant factors, including: the strength of
8 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
9 further litigation; the amount offered in settlement; the extent of discovery and stage of the
10 proceedings; the experience and opinion of counsel; and the reaction of class members to
11 the settlement. Id. In light of the strong judicial policy favoring the settlement of class
12 actions, courts generally apply a presumption of fairness to a proposed class action
13 settlement when: (1) the settlement is reached through arm's-length bargaining; (2)
14 investigation and discovery are sufficient to allow counsel and the court to act intelligently;
15 (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.
16 Dunk, 48 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

17 **A. The Proposed Settlement Merits Final Approval**

18 The proposed settlement of this action warrants final approval under the standards
19 summarized above. The settlement is fair, reasonable and adequate, and represents a
20 favorable resolution of highly disputed claims. Further, the settlement thus far has been
21 overwhelmingly approved by the class members, as there are no objections and no Class
22 Member requested exclusion.

23 **1. The Settlement Is the Product of Arm's-Length, Informed**
24 **Negotiations**

25 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
26 was reached following arm's-length negotiations presided over by Daniel Turner, Esq., a
27 highly respected and well-known mediator with extensive experience mediating wage and
28 hour class actions. [Brouillette Decl., ¶ 7.] Moreover, Plaintiff and counsel were well-informed

1 about the facts and the law, and counsel Zachary Crosner and Brandon Brouillette, and Crosner
2 Legal, have years of litigation experience, including litigating wage and hour class actions.
3 Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further
4 litigation or settling the matter. [Brouillette Decl., ¶¶ 28-41.] Defendants likewise were
5 represented by highly-qualified and experienced defense counsel. Both sides advocated
6 vigorously for their clients, and nothing was "left on the table."

7 **2. The Class Reacted Favorably to the Settlement**

8 The settlement was well-received by the class. As of the filing of this motion, no
9 objections have been filed, and only one Class Member requested exclusion out of 1,929
10 settlement class members. [Islas Decl., ¶¶ 8-9.] As many courts recognize, class member reaction
11 to the settlement is one of the most important factors to consider in determining if final approval
12 should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976);
13 see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It
14 is well-settled that the reaction of the class to the settlement is perhaps the most significant factor
15 to be weighed in considering its adequacy") (internal quotation marks omitted).

16 **C. The Proposed Settlement Meets the Dunk and Kullar Factors and is within** 17 **the Range of Reasonableness, And Final Approval Should Be Granted**

18 Prior to mediation, the parties engaged in extensive informal discovery to facilitate
19 settlement discussions. As a result, Plaintiff reviewed documents and information regarding
20 XPDEL's payroll practices, pay stubs and time records for a sampling of class members, meal
21 and rest break policies, etc., and information from Defendant regarding class size and breakdown
22 of job positions, work weeks, rates of pay, and other information used to formulate a damages
23 model. This extensive information then was analyzed by a consulting expert to look for meal and
24 rest break violation rates, time spent working off the clock, etc., and other issues relevant to
25 liability and damages. Plaintiff's counsel are confident they obtained sufficient information to
26 understand the law and facts of this case and make an informed decision regarding the proposed
27 settlement and whether it is in the best interests of the class. [Brouillette Decl., ¶¶ 6, 13.]
28

1 Using that data, Plaintiff ran various calculations and estimated XPDEL's likely
2 maximum exposure on the class claims at approximately \$1,915,745, including about \$164,140
3 on the off the clock/unpaid wage claims, approximately \$70,805 on the meal period claims,
4 about \$455,260 on the rest period claims, about \$61,940 on the expense reimbursement claim,
5 around \$102,600 on the wage statement claims, and \$1,061,000 on the waiting time penalty
6 claims. [Brouillette Decl., ¶ 14.] Plaintiff and counsel substantially discounted the value of these
7 claims, however, in light of Defendant's multi-layered defenses on both class certification and
8 the merits.

9 On the unpaid wage claims, Plaintiff alleged that, due to understaffing and the press of
10 business, he and the class members regularly had to continue working during their meal breaks
11 even though they had clocked out, and that XPDEL simply "auto-deducted" 30 minutes of time
12 for each shift even though employees were working during that time. Accordingly, Plaintiff
13 contends he lost at least 2 hours of pay each week for this "off the clock" work. In response,
14 XPDEL argued its timekeeping and payroll policies were fully compliant and that it accurately
15 tracked and paid for all hours worked. It also emphasized that off the clock was strictly
16 prohibited and accordingly if any employees worked while clocked out it was against company
17 policy and done on a voluntary basis, and without the company's knowledge. White v.
18 Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or
19 constructive knowledge of the off the clock work). For the same reason, XPDEL contended this
20 issue was not suitable for class certification, as determining the reasons behind any alleged off
21 the clock work would have required extensive individualized inquiries. [Brouillette Decl., ¶ 15.]

22 On the meal and rest break claims, Plaintiff contends that XPDEL's alleged "auto-
23 deduct" policy obscured the fact that employees worked through meal periods or did not receive
24 fully compliant meal periods. In Donohue v. AMN Servs., LLC (2021) 11 Cal.5th 58, 61, the
25 California Supreme Court recognized "the meal period provisions are designed to prevent even
26 minor infringements on meal period requirements, and rounding is incompatible with that
27 objective." Thus, per Plaintiff and Donohue, even minor infringements on the meal period
28 requirements resulted in a violation and obligation for XPDEL to pay the required premium pay.

1 Plaintiff's review of the time and payroll records provided suggested these deficiencies in the
2 policies affected employee breaks. For example, Plaintiff's expert's analysis showed at least a
3 17.6% violation rate for meal period violations. Plaintiff also alleged XPDEL failed to provide
4 second lunches on shifts of 10 or more hours. Similarly, Plaintiff alleged XPDEL's written
5 break policy likewise was non-compliant, failed to properly reflect the time periods for taking
6 breaks, and also resulted in "de facto" violations as well as the absence of third rest breaks on
7 shifts over 10 hours. [Brouillette Decl., ¶ 16.]

8 In response, XPDEL argued its written meal and rest break policies are fully compliant,
9 and that it provided employees with the opportunity to receive all required breaks. Defendant
10 further maintained that, in light of its compliant policies, whether a class member missed a meal
11 period, received a late meal period, or missed a rest break would have been aberrational and
12 against company policy. Thus, per XPDEL, these issues are not amenable to class or
13 representative treatment since their resolution would require individualized inquiries as to why a
14 break was missed or non-compliant. [Brouillette Decl., ¶ 17.]

15 On the expense reimbursement claim, Plaintiff alleges Defendant's management and
16 supervisors would constantly text Plaintiff and other employees on their cell phones throughout
17 their shifts to communicate with them on work-related issues, and that no reimbursement was
18 paid. Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal. App. 4th 1137; Stuart v.
19 RadioShack (N.D. Cal. 2009) 641 F.Supp.2d 901, 903-04 (if an employer "knows or has reason
20 to know that the employee has incurred a reimbursable expense. . . it has the duty to exercise
21 due diligence and take any and all reasonable steps to ensure that the employee is paid for the
22 expense.") On the other hand, XPDEL argued there would be no conceivable need for
23 employees to use their own phones while working or for any work-related purposes, and if they
24 did so it was purely for personal convenience rather than business necessity. Thus, per XPDEL,
25 no reimbursement is owed. [Brouillette Decl., ¶ 18.]

26 The claims under Labor Code sections 203 and 226 are derivative of the primary unpaid
27 wage claims, and accordingly are subject to the same risks and uncertainties plus additional
28 risks posed by the need to take into account the discretionary nature of such awards and the

1 “good faith” and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008)
2 163 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code
3 § 203 even though class prevailed on underlying claim for failure to pay living wages). Thus,
4 while these claims largely are derivative of the unpaid wage claim, they also are subject to
5 additional defenses. [Brouillette Decl., ¶ 19.]

6 As far as potential PAGA liability, the allegedly aggrieved employees theoretically are
7 entitled to penalties totaling around \$415,000 should Plaintiff prevail on all claims and establish
8 violations of the multiple Labor Code sections as to each and every pay period at issue.
9 [Brouillette Decl., ¶ 10.] As with the class claims, Plaintiff discounted the potential PAGA
10 penalties based on Defendant’s various defenses on the merits and also accounted for the Court’s
11 wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code §
12 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded
13 penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal); In re
14 Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA
15 penalties denied after trial).

16 Accordingly, the Parties allocated \$16,000 to PAGA penalties, and Plaintiff submits this
17 amount is reasonable under the circumstances and in line with comparable settlements in other
18 wage and hour class actions in California. E.g., Van Kempen v. Matheson Tri-Gas, Inc. (N.D.
19 Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of \$5,000 PAGA
20 penalty from \$370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water
21 Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a \$7,500
22 PAGA payment reasonable when measured against the overall settlement of \$345,000 and the
23 possible weaknesses in Plaintiffs’ case, or 2.2 percent of total settlement). Additionally, the
24 LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able
25 to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S.
26 Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where
27 “[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not
28 objected to the settlement.

1 The settlement obviates the significant risk that this Court may find any kind of class or
2 representative resolution unachievable or deny certification of all or some of Plaintiff's claims.
3 Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued
4 litigation would be lengthy and expensive as the parties pursued merits discovery, a probable
5 motion to decertify, as well as trial and possible appeals, and would further and substantially
6 delay any recovery by the class with no assurance of recovering significantly more than the
7 proposed settlement. While Plaintiff is confident in the merits of these claims, legitimate
8 controversies exist regarding each one of them. Plaintiff also recognizes proving the amount of
9 wages and penalties due each Class Member would be an expensive, time-consuming, and
10 uncertain proposition. [Brouillette Decl., ¶¶ 21-22.]

11 Plaintiff and counsel discounted the value of the class claims consistent with the risks
12 discussed above, and carefully weighed the likelihood of the class receiving substantially
13 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
14 real and substantial risks – settlement on the proposed terms and without prolonged and costly
15 litigation was in the best interests of the class, and the overall \$175,000 recovery represents a
16 significant percentage of Defendant's potential exposure. Given these risks, a total recovery for
17 the class of \$175,000, which will result in average award of about \$172 per class member, is a
18 significant result well within the range of reasonableness considering all potential outcomes, and
19 it will provide direct monetary awards to all Class Members without further delay. [Brouillette
20 Decl., ¶ 23.]

21 Importantly, the mere fact that a settlement does not provide the same recovery as might
22 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
23 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
24 settlement process...even if the relief afforded by the proposed settlement is substantially
25 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
26 settlement because the public interest may indeed be served by a voluntary settlement in which
27 each side gives ground in the interest of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir.
28 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"); 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). Importantly as well, the proposed settlement is non-reversionary and will provide timely 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. PLAINTIFF'S ENHANCEMENT

A modest incentive award for Plaintiff is appropriate under applicable law. See Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from \$2,000 to \$25,000). He devoted time and resources to the litigation, provided documents, assisted Class Counsel with investigating the claims asserted and in preparing for mediation. The service payment provided to Plaintiff as the class representative is typical in class action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563 F.3d 948, 958-59 (incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.").

Here, the Settlement Agreement provides for an enhancement of up to \$10,000.00 to Plaintiff. This request is reasonable given the risks he undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for

Defendant's litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing himself at risk of discrimination by future prospective employers. As stated in his declaration filed at preliminary approval, among taking many other actions assisting in the successful litigation of this case, Plaintiff 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., ¶ 24.]

VI. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to Phoenix for its services as the Settlement Administrator. As set forth in the Declaration of Lluvia Islas, Phoenix has performed and will continue to perform its required duties through final distribution of the settlement funds and incurred \$10,000 in fees and expenses. [Islas Decl., ¶ 17; Exh. B.] Accordingly, Plaintiff respectfully requests the Court approve payment of \$10,000 to Phoenix from the GSA. [Brouillette Decl., ¶ 25.]

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 Counsel's request for attorney's fees and costs is

1 reasonable and justified by the work performed, the benefits obtained, and the contingent
2 risk assumed.

3 As addressed in detail above, at the time the parties reached the tentative settlement
4 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk
5 that some or all the claims would not be certified for class treatment, as Defendant had
6 strong arguments that its compensation policies were legal and properly compensated the
7 class members. Even if Plaintiff certified some or all of the claims and ultimately prevailed
8 on the merits, it undoubtedly would have taken several years to realize any recovery while
9 they pursued class certification, trial, and an almost certain appeal. [Brouillette Decl.,
10 ¶¶ 15-20.]

11 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief she set out to
12 obtain, and the settlement provides substantial cash payments to Class Members, with an
13 average award of about \$172, and with a maximum award of over \$1,750. Importantly as
14 well, the Class Members have been overwhelmingly supportive of the Settlement – as of
15 the filing of this motion, there are no objections to the settlement and only one opt out.
16 [Islas Decl., ¶¶ 8-9.]

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

18 The United States Supreme Court has ruled the parties to a class action properly
19 may negotiate not only the settlement of the action itself but also the payment of attorney's
20 fees. Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart
21 (1983) 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon
22 attorney's fee provisions are the ideal towards which the parties should strive: "A request
23 for attorney's fees should not result in a second major litigation. Ideally, of course, litigants
24 will settle the amount of a fee." The United States Supreme Court has reemphasized this
25 policy and further stressed trial courts have "a responsibility to encourage agreement" on
26 fees. Blum v. Stenson (1984) 465 U.S. 886, 902 n.19.

27 As part of the Settlement, Defendants agreed not to object to an award of no more
28 than 1/3 of the GSA for attorney's fees, or \$58,333.33, and up to \$15,000 in reimbursement

1 for litigation costs and expenses (only \$14,522.07 is requested). Such a fee is
2 commensurate with what the market would provide for similar services and the Court
3 therefore can most certainly enforce the agreement. As California's Court of Appeal has
4 instructed:

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

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

11 Here, the parties did not negotiate the inclusion of attorney's fees until after
12 extensive arms-length bargaining regarding relief to the Class was completed.
13 [Brouillette Decl., ¶ 26.] The requested fee and cost award was a product of these arms-
14 length negotiations and fairly reflects the marketplace value of the services rendered by
15 Class Counsel in this case. As a result, the fee agreed to by the parties should be approved.

16 **C. Class Counsel's Fees are Justified When Calculated as a Percentage of the**
17 **Common Fund**

18 In approving fee applications, courts typically apply either a percentage-of-recovery
19 method or the lodestar method. Laffitte v. Robert Half Int'l., Inc. (2016) 1 Cal.5th 480,
20 489; Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on
21 other grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260. The
22 California Supreme Court recently recognized the advantages and equities of calculating
23 attorney's fees using the percentage-of-the-common-fund method in another wage-and-
24 hour case:

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

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

1 Indeed, both California and federal courts have long recognized an appropriate
2 method for determining the award of attorney's fees is based on a percentage of the total
3 value of benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20
4 Cal.3d 25, 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air
5 West, Inc. (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the
6 common fund recovered operates to "spread litigation costs proportionately among all the
7 beneficiaries so that the active beneficiary does not bear the entire burden alone." Vincent,
8 557 F.2d at 769.

9 In determining a reasonable common fund fee award, courts should also consider the
10 fact that fees serve as an economic incentive for lawyers to bring class action litigation to
11 achieve increased access to the judicial system for meritorious claims and to enhance
12 deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without
13 prosecution on a contingent basis and use of the class action mechanism, the courthouse
14 door would effectively be closed to most class members due to the relatively small size of
15 their individual claims in relation to the enormous time and cost associated with class action
16 litigation.

17 Here, Class Counsel seek a fee award for their successful prosecution and resolution
18 of this action of 1/3 of the total amount recovered by the Class via the lawsuit, or
19 \$58,333.33. The percentage requested is justified for the reasons set forth further below,
20 comports with this Court's standard fee award as set forth in the Preliminary Approval
21 Order, and further is in line with fee awards calculated on a percentage-of-the-benefit basis.
22 Indeed, review of class action settlements shows that courts have historically awarded fees
23 in the range of 20 to 50 percent, depending upon the circumstances of the case. In re
24 Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding
25 that percentage fees in common fund cases range from 20 to 50 percent); Newberg,
26 Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the
27 upper limit on a reasonable fee award from a common fund in order to assure that the fees
28

do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request

To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 119.2 hours of time on this matter, resulting in a modest and very reasonable lodestar of \$87,765.00.

As is fully detailed in the Brouillette Declaration, Class Counsel's efforts included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal research, obtaining Plaintiff's employment records, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other employees of Defendants; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related documents; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (6) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (7) drafting a mediation brief and accompanying damages model after review and analysis of defendant's informal discovery production; (8) attending an all-day mediation; (9) negotiating and drafting the settlement agreement and related documents; (10) drafting the amended complaint; (11) drafting the motion for preliminary approval and supplemental papers re: changing the notice period; (12) administration of the settlement, communications with the Settlement Administrator and settlement class members; (13) drafting the motion for final approval and motion for attorney's fees, and attending the final approval hearing; and (14) extensive communications with the Plaintiff regarding case status, case investigation and document review, mediation, and settlement terms. Additionally, Class Counsel will incur additional time to attend the final approval hearing and following final approval to, inter alia,

1 respond to class member inquiries, work with the Settlement Administrator on the distribution
2 of settlement funds, and on the compliance hearing. [Brouillette Decl., ¶ 27, Exh. 2.]

3 In pursuing this matter, Class Counsel incurred total attorney's fees of \$87,765, and
4 the lodestar is based on a very reasonable number of hours worked to litigate this matter to a
5 successful conclusion (119.2 attorney hours), and the requested attorney hourly rates are
6 reasonable and comport with hourly rates charged by other attorneys with similar experience in
7 this practice area in California. [Brouillette Decl., ¶¶ 28-46.] On a lodestar basis, the fee
8 request of \$58,333.33 results in a base lodestar that is larger than the fees requested on a
9 percentage basis, and therefore there is no request for a lodestar modifier. This does,
10 however, highlight the reasonableness of the fee request, since the actual fees requested are
11 lower than the true worth of the services rendered when valued via traditional hourly
12 billing.

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

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

26 Courts apply a five-part test in calculating a reasonable percentage fee in common
27 fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the
28 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.

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 Member because the proceeds will be distributed
5 shortly as opposed to waiting additional years for a similar, or possibly, less favorable
6 result. Considering many individual claims would be very modest and would not be cost-
7 effective to pursue successfully, the Settlement provided them with fair compensation for
8 their claims. Moreover, the absence of any objection to either the Settlement or the
9 attorney's fee request bolsters the excellent results. Indeed, the approval of the Class is
10 overwhelming as indicated by the fact that only one class member 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
18 to expend a substantial amount of time and advance significant costs to prosecute a
19 statewide class action suit with no guarantee of compensation or reimbursement, in the
20 hope of prevailing against a sophisticated company represented by first-rate attorneys.
21 Despite their belief in the merits of Plaintiff's claims, they also knew they faced
22 substantial risks of class certification and the ability to prove class-wide and individual
23 damages. In light of the highly uncertain nature of this suit, Class Counsel also bore the risk
24 that Defendant would dig in and attempt to bury their small firm in work. Given the small
25 size of Class Counsel's firm, not receiving any compensation for several years while
26 simultaneously advancing litigation costs posed considerable risk and difficulty.

27 [Brouillette Decl., ¶¶ 47-48.]

28 /////

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
4 of wage and hour law and class action procedure. This Settlement was possible only
5 because counsel persuaded Defendant that Plaintiff and the putative class had a realistic
6 chance of prevailing on their claims despite Defendant's contrary arguments, and that
7 the case would be pursued through class certification and trial if necessary. In
8 successfully navigating these hurdles, Class Counsel displayed appropriate skill while
9 pursuing a risky 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
12 paid by the hour and attorneys working on a contingent fee basis. The attorney being
13 paid by the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229
14 F.3d 1249, 1256. The attorney working on a contingent basis can only log hours while
15 working without pay towards a result that will hopefully entitle him to a market fee
16 considering the risk and other factors of the undertaking. Id. at 1257. Otherwise, the
17 contingent fee attorney receives nothing. Id. In this case, Class Counsel subjected
18 themselves to this risk in this all or nothing contingent fee case wherein the necessity
19 and financial burden of private enforcement makes the requested award appropriate.

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

1 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
2 the investment of unnecessary time in a case, and the adverse resolution of any one of
3 several difficult issues present in this matter could have doomed the entire effort. As
4 discussed, the attorney's fees in this case were not only contingent but fairly risky, and
5 there was always a chance Plaintiff's counsel would receive nothing for any number of
6 reasons. [Brouillette Decl., ¶¶ 47-48.] Accordingly, the contingent nature of the fee and the
7 financial burdens on Class Counsel and Plaintiff 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, and review of class action settlements over the past 10
11 years shows that the courts have historically awarded fees in the range of 20 to 50 percent,
12 depending upon the circumstances of the case. In re Warner Communications Sec. Litig.
13 (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common
14 fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) §
15 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award
16 from a common fund in order to assure that the fees do not consume a disproportionate part
17 of the recovery obtained for the class, although somewhat larger percentages are not
18 unprecedented."). Class Counsel's requested fees equal to 1/3 of the gross amount recovered
19 on behalf of the class and are well within the range of reasonableness under either the
20 percentage of the recovery or the lodestar method in light of the contingent risk assumed,
21 the delay in payment, the result achieved, and the overall quality of the representation.

22 **F. Class Counsel's Costs and Expenses are Reasonable**

23 Plaintiff's counsel also requests reimbursement of actual out-of-pocket expenses
24 incurred to prosecute this action. These expenses were incidental and necessary to the effective
25 representation of the employees, and Plaintiff's counsel is permitted to recover litigation costs
26 and expenses under the common fund doctrine and the Settlement Agreement. Serrano, 20
27 Cal.3d at 35 (common fund doctrine permits recovery of fees and costs from the fund); Rider v.
28 County of San Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the

1 common fund “[o]f necessity, and for precisely the same reasons discussed above with respect
2 to the recovery of attorneys’ fees by ... [Plaintiffs’] attorneys”). Plaintiff’s counsel also is
3 entitled to recover “those out-of-pocket expenses that would normally be charged to a fee-
4 paying client.” Harris v. Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

5 Per the Brouillette Declaration, Class Counsel incurred a total of \$14,522.07 in
6 expenses in connection with this matter. These expenses include amounts paid for court
7 filing fees, service of process, expert fees, and mediation fees, all of which are costs
8 normally billed to and paid by the client. These costs were reasonably incurred in the
9 prosecution of this matter, and should be reimbursed in full. Plaintiff respectfully
10 requests that the Court authorize reimbursement of counsel’s costs in the amount of
11 \$14,522.07. [Brouillette Decl., ¶¶ 49-50.]

12 **VIII. CONCLUSION**

13 For all the foregoing reasons, Plaintiff Pricilla Cooper respectfully requests that the
14 Court grant this motion and grant final approval of the proposed class action settlement and
15 approve the payment of PAGA penalties to the State. Plaintiff further requests the Court
16 approve payment of the Settlement Administrator’s fees and expenses, approve the requested
17 class representative enhancement payment, approve the award of attorney’s fees and costs as
18 requested, and enter judgment in this action. Finally, Plaintiff request the Court set a final
19 compliance hearing for September 24, 2026, or a later date convenient for the Court.
20

21 Dated: May 14, 2025

CROSNER LEGAL, P.C.

22
23 By: 
24 Zachary M. Crosner
25 Brandon K. Brouillette
26 Attorneys for Plaintiff Arthur Quesada
27
28