

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Maggie K. Realin (SBN 263639)

mrealin@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

D.LAW, INC.

Emil Davtyan (SBN 299363)

emil@d.law

250 N. Madison

Pasadena, CA 91101

Telephone: (818) 875-2008/Facsimile: (818) 722-3974

MARA LAW FIRM, PC

David Mara (SBN 230498)

dmara@maralawfirm.com

3160 Camino Del Rio South, Suite 207

San Diego, CA 92108

Telephone: (619) 234-2833/Facsimile: (619) 234-4048

Attorneys for Plaintiff Angel Cuellar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

ANGEL CUELLAR, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

NEW BERN TRANSPORT
CORPORATION, a Delaware Corporation;
PEPSI-COLA SALES AND
DISTRIBUTION, INC., a Delaware
Corporation; PEPSICO, INC., a North
Carolina Corporation; and Does 1-10,
Inclusive,

Defendants.

Case No. STK-CV-UOE-2024-0008803
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Robert T. Waters
Department 11B

CLASS ACTION

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

Final Approval Hearing:

Date: September 17, 2026

Time: 9:00 a.m.

Dept.: 11B

Complaint filed: July 25, 2024

Trial Date: Not set

TABLE OF CONTENTS

PAGE(S)

I.	INTRODUCTION	7
II.	THE SETTLEMENT MEETS THE CRITERIA FOR FINAL APPROVAL	8
A.	Legal Standard for Final Approval	8
1.	The Settlement is the Product of Arm's Length and Informed Negotiations	9
2.	The Settlement Amount is Fair and Reasonable	10
3.	Sufficient Discovery has been Completed to Warrant Settlement.....	10
4.	Class Counsel is Experienced, and Endorses the Settlement.....	11
5.	Class Members' Positive Reaction Warrants Final Approval	12
6.	The Proposed Plan of Allocation is Fair and Reasonable	12
7.	Uncashed Check Distribution is Proper	13
8.	The Presence of Government Participant.....	13
B.	The Class Received Adequate Notice	13
III.	LEGAL BASIS FOR AN AWARD OF ATTORNEYS' FEES AND COSTS	14
IV.	FEE AWARD IS PROPER UNDER LODESTAR/MULTIPLIER METHOD	15
A.	Counsel's Hourly Rates are Reasonable	16
B.	Counsel's Hours Spent on the Case are Reasonable.....	17
V.	FACTORS JUSTIFYING THE APPROVAL OF THE REQUESTED ATTORNEY FEE AWARD ARE SATISFIED	18
A.	The Results Achieved	18
B.	The Risk Involved with the Litigation	19
C.	Counsel's Skill, Experience, and Quality of Work	21
D.	The Contingent Nature of the Fee.....	21
E.	Awards Made in Similar Cases	22
F.	The Reaction of the Class	23
G.	The Comparison of the Benchmark with Counsel's Lodestar	23
VI.	A MULTIPLIER OF 1.11 IS REASONABLE	23
VII.	CLASS COUNSEL'S COSTS WERE REASONABLY INCURRED	24
VIII.	CLASS REPRESENTATIVE'S SERVICE AWARD IS FAIR.....	25
IX.	CONCLUSION	27

TABLE OF AUTHORITIES

PAGES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal. App. 4th 1135	8, 10, 13, 19
<i>Bellinghausen v. Tractor Supply Co.</i> (N.D. Cal. 2014) 303 F.R.D. 611	19
<i>Boyd v. Bank of Am. Corp.</i> (C.D. Cal. 2014) 300 F.R.D. 431	24
<i>Chavez v. Blue Sky Nat. Beverage Co.</i> (N.D. Cal. June 1, 2012) 2012 WL 12921300	16, 24
<i>Clark v. Am. Residential Servs.</i> (2009) 175 Cal.App.4th 785	25
<i>Craft v. Cty. of San Bernardino</i> (C.D. Cal. 2008) 624 F. Supp. 2d 1113	18, 22
<i>Dearaujo v. Regis Corp.</i> (E.D. Cal. July 21, 2017) 2017 WL 3116626	26
<i>Donohue v. AMN Services, LLC</i> (2021) 11 Cal.5th 58	20
<i>Dunk v. Ford Motor Co.</i> (1982) 48 Cal.App.4th 1794	passim
<i>Durham v. Cont'l Cent. Credit, Inc.</i> (S.D. Cal. Jan. 10, 2011) 2011 WL 90253.....	11
<i>Edmonds v. United States</i> (D.S.C. 1987) 658 F.Supp.1126.....	21
<i>Fernandez v. Victoria's Secret Stores</i> (C.D. Cal. July 21, 2008) 2008 WL 8150856	22
<i>Gates v. Deukmejian</i> (9th Cir. 1992) 987 F.2d 1392	16
<i>Glendora Cmty. Redev. Agency v. Demeter</i> (1984) 155 Cal.App.3d 465	18
<i>Gomez v. Lincare, Inc.</i> (2009) 173 Cal. App. 4th 508	20
<i>Greene v. Dillingham Constr. NA., Inc.</i> (2002) 101 Cal.App.4th 418	21, 23
<i>Hammit v. Lumber Liquidators</i> (S.D. Cal. 2014) 19 F. Supp. 3d 989.....	20
<i>Hanlon v. Chrysler Corp.</i> (1999) 150 F.3d 1011.....	14

1	<i>Hefler v. Wells Fargo & Co.</i>	
2	(N.D. Cal. Dec. 18, 2018) 2018 WL 6619983	17
3	<i>Hensley v. Eckerhart</i>	
4	(1983) 461 U.S. 424	15, 16
5	<i>In re Cellphone Termination Fee Cases</i>	
6	(2010) 186 Cal.App.4th 1380	25
7	<i>In re Consumer Privacy Cases</i>	
8	(2009) 175 Cal.App.4th 545	15, 23
9	<i>In re Immune Response Sec. Litig.</i>	
10	(S.D. Cal. 2007) 497 F. Supp. 2d 1166	23
11	<i>In re Media Vision Tech. Sec. Litig.</i>	
12	(N.D. Cal.1996) 913 F.Supp. 1362	24
13	<i>In re Omnivision Techs., Inc.</i>	
14	(N.D. Cal. 2007) 559 F.Supp.2d 1036	12, 18, 22
15	<i>In re Pacific Enters. Sec. Litig.</i>	
16	(9th Cir. 1995) 47 F.3d 373	11
17	<i>In re Sutter Health Uninsured Pricing Cases</i>	
18	(2009) 171 Cal. App. 4th 495	24
19	<i>In re TD Ameritrade Account Holder Litig.</i>	
20	(N.D. Cal. Sept. 13, 2011) 2011 WL 4079226	10
21	<i>In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.</i>	
22	(N.D. Cal. Mar. 17, 2017) 2017 WL 1047834	17
23	<i>Keating v. Super. Ct.</i>	
24	(1982) 31 Cal. 3d 584	15
25	<i>Keith v. Volpe</i>	
26	(C.D. Cal. 1980) 501 F.Supp.403	24
27	<i>Ketchum v. Moses</i>	
28	(2001) 24 Cal.4th 1122	16, 21
	<i>Knight v. Red Door Salons, Inc.</i>	
	(N.D. Cal. Feb. 2, 2009) 2009 WL 248367	21
	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116	9, 10, 11
	<i>Laffitte v. Robert Half Int’l Inc.</i>	
	(2016) 1 Cal.5th 480	15, 22
	<i>Lealao v. Beneficial California</i>	
	(2000) 82 Cal.App.4th 19	18, 23
	<i>Linney v. Cellular Alaska P’ship</i>	
	(9th Cir. 1998) 151 F.3d 1234	10, 11
	<i>Low v. Trump University, LLC</i>	
	(S.D. Cal. 2017) 246 F.Supp.3d 1295	26

1	<i>Maldonado v. Epsilon Plastics, Inc.</i>	
2	(2018) 22 Cal. App. 5th 1308	21
3	<i>Martin v. AmeriPride Servs.</i>	
4	(S.D. Cal. June 9, 2011) 2011 WL 2313604.....	12, 27
5	<i>Matter of Cont'l Ill. Sec. Litig.</i>	
6	(7th Cir. 1992) 962 F.2d 566	25
7	<i>Morales v. Paschen Mgmt. Corp.</i>	
8	(C.D. Cal. Sept. 27, 2019) 2019 U.S. Dist. Lexis 208588	20
9	<i>Nat'l Rural Telecomm. v. DirectTV, Inc.</i>	
10	(C.D. Cal. 2004) 221 F.R.D. 523	10, 23
11	<i>New York Gaslight Club, Inc. v. Carey</i>	
12	(1980) 447 U.S. 54.....	18
13	<i>Nobles v. MBNA Corp.</i>	
14	(N.D. Cal. June 29, 2009) 2009 WL 1854965	12
15	<i>O'Connor v. Starbucks Corp.</i>	
16	(N.D. Cal. July 14, 2008) 2008 U.S. Dist. Lexis 53877	20
17	<i>Officers for Justice v. Civil Serv. Comm'n of S.F.</i>	
18	(9th Cir. 1982) 688 F.2d 615	8, 12
19	<i>Olson v. Cohen</i>	
20	(2003) 106 Cal. App. 4th 1209	14
21	<i>Paul, Johnson, Alston & Hunt v. Gaulty</i>	
22	(9th Cir. 1989) 886 F.2d 268	15
23	<i>People ex rel. Dept. of Transp. v. Yuki</i>	
24	(1995) 31 Cal.App.4th 1754	15
25	<i>PLCM Group, Inc. v. Drexler</i>	
26	(2000) 22 Cal. 4th 1084	16
27	<i>Radcliffe v. Experian Info. Solutions, Inc.</i>	
28	(2013) 715 F.3d 1157	26
	<i>Raining Data Corp. v. Barrenechea</i>	
	(2009) 175 Cal.App.4th 1363	17
	<i>Richardson v. THD At-Home Services, Inc.</i>	
	(E. D. Cal. Apr. 6, 2016) 2016 WL 1366952.....	26
	<i>Ridgeway v. Wal-Mart Stores Inc.</i>	
	(N.D. Cal., Sept. 14, 2017) 2017 WL 4071293	26
	<i>Rodriguez v. West Publ'g</i>	
	(9th Cir. 2009) 563 F.3d 948	25
	<i>Romero v. Producers Dairy Foods, Inc.</i>	
	(E.D. Cal. Nov. 14, 2007) 2007 WL 3492841	22
	<i>Ross v. U.S. Bank Nat'l Ass'n</i>	
	(N.D. Cal. Sept. 29, 2010) 2010 WL 3833922	26

1	<i>San Bernardino Valley Audubon Soc’y v. Cnty. of San Bernardino</i>	
2	(1984) 155 Cal. App. 3d 738	16
3	<i>Satchell v. Fed. Express Corp.</i>	
4	(N.D. Cal. Apr. 13, 2007) 2007 WL 1114010	9
5	<i>Schiller v. David’s Bridal, Inc.</i>	
6	(E.D. Cal. June 11, 2012) 2012 WL 2117001	24
7	<i>Schneider v. Chipotle Mexican Grill, Inc.</i>	
8	(N.D. Cal. Nov. 4, 2020) 2020 WL 6484833	17
9	<i>Serrano v. Priest</i>	
10	(1977) 20 Cal. 3d 25	14, 18
11	<i>Singer v. Becton Dickinson and Co.</i>	
12	(S.D. Cal. June 1, 2010) 2010 WL 2196104.....	1, 22
13	<i>Smith v. 9W Halo W. OpCo L.P.</i>	
14	(N.D. Cal. Mar. 28, 2025) 2025 U.S. Dist. Lexis 59497	20
15	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
16	(N.D. Cal. June 17, 2015) 2015 WL 3776765	19
17	<i>Syers Props. III v. Rankin</i>	
18	(2014) 226 Cal. App. 4th 691	16
19	<i>Thieriot v. Celtic Ins. Co.</i>	
20	(N.D. Cal. Apr. 21, 2011) 2011 WL 1522385	10
21	<i>Thomas v. Cognizant Tech. Sols. U.S. Corp.</i>	
22	(C.D. Cal. June 24, 2013) 2013 WL 12371622	19
23	<i>Torchia v. W.W. Grainger, Inc.</i>	
24	(E.D. Cal. 2014) 304 F.R.D. 256	13
25	<i>Vandervort v. Balboa Capital Corp.</i>	
26	(C.D. Cal. 2014) 8 F. Supp. 3d 1200	24
27	<i>Vasquez v. Coast Valley Roofing, Inc.</i>	
28	(E.D. CA 2010) 266 F.R.D. 482	22
	<i>Vincent v. Hughes Air West, Inc.</i>	
	(9th Cir. 1977) 557 F.2d 759	15
	<i>Vizcaino v. Microsoft Corp.</i>	
	(9th Cir. 2002) 290 F.3d 1043	16, 23, 24
	<i>Welch v. Metro. Life Ins. Co.</i>	
	(9th Cir. 2007) 480 F.3d 942	17
	<i>Wershba v. Apple Computer, Inc.</i>	
	(2001) 91 Cal.App.4th 224	8, 11, 14, 24
	<i>Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.</i>	
	(N.D. Cal. Dec. 17, 2007) 2007 WL 4531783.....	25
	<i>Wininger v. SI Mgmt., L.P.</i>	
	(9th Cir. 2002) 301 F.3d 1115	24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Statutes

California Code of Civil Procedure

Section 384(b)13

California Rules of Court

Rule 3.76613

Rule 3.769(f)13

I. INTRODUCTION

Class Counsel successfully negotiated a California class and representative action Settlement against Defendant New Bern Transport Corporation (“New Bern” or “Defendant”) which provides a common fund of \$999,999.00 to be paid to 1,900 Participating Settlement Class Members. This Settlement resolves the claims of current and former drivers employed by Defendant in California between July 25, 2020 and December 3, 2025 excluding any weeks covered by the settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y).

100% of the money will be paid out as there is no reversion to Defendant. The response to the Settlement is overwhelmingly positive - out of 1,880 Settlement Class Members who received the notice, there are no objections and only two opt outs. Declaration of Madely Nava of Apex Class Action LLC (“Apex Decl.”), ¶¶9, 11, 12. The average Class Member will receive a settlement payment of approximately \$298.95, and the highest settlement payment will be \$586.74. *Id.* at ¶16.

Class Counsel’s fee request of \$329,999.67, one-third of the Gross Settlement Amount, is well within the range commonly awarded in comparable cases and is well-justified here, particularly considering the results achieved on behalf of the Class, and the amount of work contributed by Class Counsel during this litigation. Class Counsel’s fee request is also supported by a lodestar multiplier cross-check. Declaration of Isam C. Khoury (“Khoury Decl.”), ¶¶32, 34-37, 40, 42.

Plaintiff’s counsel total lodestar in this matter is \$298,587.00. Khoury Decl., ¶34; Decl. of David Mara (“Mara Decl.”), ¶¶10, 11, 15, 16, Ex. 1; Decl. of Emil Davtyan (“Davtyan Decl.”), ¶¶10, 11. Using this total lodestar, the fee requested is equivalent to a reasonable multiplier of 1.11. Khoury Decl. ¶41.

Plaintiff further requests the Court award Counsel \$25,000.00 for out-of-pocket litigation costs, although this amount will have been exceeded by the time the matter is granted final approval. These costs are reasonable and were necessary to conduct the litigation. Khoury Decl., ¶¶32, 34, 48; Mara Decl., ¶17, Ex. 1; Davtyan Decl., ¶12. Also, the Settlement Administrator, Apex Class Action LLC, shall be awarded \$16,990 for its services in

1 administering this Settlement. Apex Decl., ¶20.

2 Lastly, Plaintiff Angel Cuellar requests a Service Award of \$10,000 for his services to
3 the Class. Plaintiff performed his duties as the Class Representative and has always put the
4 interest of Class Members above his own. This amount is justified by Plaintiff's dedication to
5 this action, and the risks undertaken in commencing this suit. See Declaration of Angel Cuellar,
6 ("Cuellar Decl."), ¶8.

7 **II. THE SETTLEMENT MEETS THE CRITERIA FOR FINAL APPROVAL**

8 **A. Legal Standard for Final Approval**

9 The settlement of a class action requires approval of the court. Cal. Rules of Court, Rule
10 3.769. To warrant final approval, a class settlement must be fair, adequate, and reasonable.
11 *Dunk v. Ford Motor Co.* (1982) 48 Cal.App.4th 1794, 1801 (citation omitted). The purpose of
12 this requirement is to "prevent fraud, collusion or unfairness to the class." *Id.* at p. 1800. The
13 court has broad discretion in determining whether to approve or reject a proposed settlement,
14 but generally, there is a strong judicial preference for pre-trial settlement of complex class
15 actions. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (disapproved on
16 other grounds by *Apex v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260); *Officers for Justice*
17 *v. Civil Serv. Comm'n of S.F.* (9th Cir. 1982) 688 F.2d 615, 625; *7-Eleven Owners for Fair*
18 *Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1145.

19 Courts consider the relevant factors when evaluating the fairness of a class action
20 settlement, including "the strength of the plaintiffs' case, the risk, expense, complexity and
21 likely duration of further litigation, the risk of maintaining class action status through trial, the
22 amount offered in settlement, the extent of discovery completed and the stage of the
23 proceedings, the experience and views of counsel, the presence of a governmental participant,
24 and the reaction of the class members to the proposed settlement." *Dunk*, 48 Cal.App.4th at p.
25 1801 (citations omitted). These factors are not exhaustive, and courts are "free to engage in a
26 balancing and weighing of factors depending on the circumstances of each case." *Wershba*, 91
27 Cal.App.4th at p. 245.

28 ///

Generally, a presumption of fairness exists where: (1) the settlement is reached through arm’s-length negotiations; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at p. 1802. Ultimately, the court “must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness,” which requires receiving “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. This Settlement satisfies these requirements, for the following reasons.

1. The Settlement is the Product of Arm’s Length and Informed Negotiations

A presumption of fairness generally applies to a class settlement that resulted from arm’s-length negotiations. *Dunk*, 48 Cal.App.4th at pp. 1801-02. This Settlement is the product of arm’s-length bargaining between attorneys who are highly experienced in complex class actions. Khoury Decl., ¶¶3-12; Mara Decl., ¶¶3-9, 13-14; Davtyan Decl., ¶¶4-6. Settlement Class Counsel thoroughly evaluated the evidence supporting the claims and defenses at issue, and were very well positioned to evaluate the Settlement’s relative strengths and benefits. The parties are well-versed in the evidentiary record upon which Plaintiff’s claims are based. Khoury Decl., ¶16. At the time of mediation, the parties understood their respective positions. *Id.* As a result of the work performed in this case, the real value of the class claims was well known, and Class Counsel determined that the Settlement with New Bern is fair, reasonable, and adequate.

Lastly, “[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.” *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4; *see also Kullar*, 168 Cal.App.4th at p. 129. Here, the Parties engaged in mediation before experienced neutral, Steven Serratore, Esq. Khoury Decl., ¶18. The involvement of a mediator further supports the finding that the settlement was free of collusion. After additional weeks of arms’-length negotiations, the Parties finalized the terms of the settlement agreement submitted for the Court’s approval. Thus, this factor warrants approval.

2. The Settlement Amount is Fair and Reasonable

To determine the fairness of the proposed settlement amount, the strength of the plaintiff's case on the merits is balanced against the settlement offer. *Nat'l Rural Telecomm. v. DirectTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 526. Even where plaintiff's case might be strong, litigation poses risks, especially where the defendant denies liability. *See Thieriot v. Celtic Ins. Co.* (N.D. Cal. Apr. 21, 2011) 2011 WL 1522385, at *5.

Here, the Gross Settlement Amount of \$999,999 is fair and reasonable as it guarantees cash payments to Class Members, without any risks, costs, and uncertainty of prolonged litigation. Khoury Decl., ¶19. Plaintiff incorporates by reference the *Kullar* analysis performed in Plaintiff's motion for preliminary approval filed on February 13, 2026. In summary, New Bern's maximum potential liability for all of Plaintiff's claims, excluding PAGA penalties is \$15,000,000. Thus, the Gross Settlement Amount of \$999,999 represents 10% of Defendant's maximum potential liability for Plaintiff's direct claims, and over 6.57% of Defendant's maximum potential liability for all Plaintiff's claims. This result is well within the range of settlements commonly approved by California state and district courts. *Id.*; *see also* P&As in support of Prelim. Approval, pp. 7:13-23, 18:1-20:15.

Taking all these factors into consideration, this Settlement is an excellent result and "the fact that a proposed settlement may only amount to a fraction of the potential recovery does not...mean that [it]...should be disapproved." *7-Eleven Owners*, 85 Cal.App.4th at p. 1150, citing *Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1242. Thus, this factor warrants approval.

3. Sufficient Discovery has been Completed to Warrant Settlement

Another factor reinforcing the presumption of fairness is whether sufficient investigation and discovery has been conducted to allow the counsel and the court to assess the fairness of the settlement. *Dunk*, 48 Cal.App.4th at p. 1802. However, the settlement can be approved even in the absence of any discovery, if other factors are satisfied. *In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 13, 2011) 2011 WL 4079226, at *6. The bottom line is "the parties have sufficient information to make an informed decision about settlement." *Durham v. Cont'l Cent.*

1 *Credit, Inc.* (S.D. Cal. Jan. 10, 2011) 2011 WL 90253, at *3, citing *Linney*, 151 F.3d at p. 1239.

2 The Parties carefully investigated the claims and facts alleged in this action, and Plaintiff
3 has made a thorough study of the legal principles applicable to the claims asserted against
4 Defendant. Plaintiff's counsel received data points, and hundreds of pages of documents to
5 evaluate Plaintiff's claims. As a result of careful investigation of the claims in this action and
6 pre-mediation analysis, the Parties had a clear understanding of their respective claims and
7 defenses. Khoury Decl., ¶17.

8 At the time the Parties engaged in negotiations, they knew and understood their
9 respective positions. As a result of the investigation and analysis performed in this case, the real
10 value of the class claims was well known, and the parties and the Court had sufficient
11 information to act intelligently in agreeing to, and approving, the settlement. *See Wershba*, 91
12 Cal.App.4th at p. 245; *see also Kullar*, 168 Cal.App.4th at p. 129. Thus, this factor warrants
13 approval.

14 **4. Class Counsel is Experienced, and Endorses the Settlement**

15 In contemplating the final approval of the settlement, courts consider Class Counsel's
16 experience and success in similar class actions. *Dunk*, 48 Cal.App.4th at p. 1802. Class
17 Counsel's recommendation of the settlement should be given weight because "[p]arties
18 represented by competent counsel are better positioned than courts to produce a settlement that
19 fairly reflects each party's expected outcome in the litigation." *In re Pacific Enters. Sec. Litig.*
20 (9th Cir. 1995) 47 F.3d 373, 378.

21 Here, Class Counsel has extensive experience in wage and hour class actions, having
22 worked on and settled hundreds of complex employment law cases for decades. *See Khoury*
23 Decl., ¶¶3-9; *Mara Decl.*, ¶¶3-9, 13-14; *Davtyan Decl.*, ¶¶4-6. Through their extensive
24 investigation, discovery, and settlement, Class Counsel have a thorough understanding of this
25 action and believe this Settlement meets the standard required for the Court's approval. Khoury
26 Decl., ¶17. Class Counsel's experience and endorsement of this Settlement warrants final
27 approval.

28 ///

1 **5. Class Members’ Positive Reaction Warrants Final Approval**

2 Another factor that may be considered at final approval is the reaction of class members
3 to the settlement. *Dunk*, 48 Cal.App.4th at p. 1801. Here, the Class reaction to the proposed
4 Settlement has been overwhelmingly favorable. Per the Court’s Order preliminarily approving
5 the settlement, the Class Notice was mailed to all Class Members on June 4, 2026. Apex Decl.,
6 ¶7. Seventy-three (73) notices were initially returned. *Id.*, ¶8. Following the administrator’s
7 skiptrace efforts, 51 notices were remailed to new addresses. Only 22 notices remain
8 undeliverable. *Id.* Not a single Class Member objected to the Settlement and only two opted out.
9 *Id.* at ¶¶11, 12. “The absence of any objector strongly supports the fairness, reasonableness, and
10 adequacy of the settlement.” *Martin v. AmeriPride Servs.* (S.D. Cal. June 9, 2011) 2011 WL
11 2313604, at *7; *In re Omnivision Techs., Inc.* (N.D. Cal. 2007) 559 F.Supp.2d 1036, 1043; *see*
12 *also Dunk*, 48 Cal.App.4th at p. 1802; *Nobles v. MBNA Corp.* (N.D. Cal. June 29, 2009) 2009
13 WL 1854965, at *2 (marginal opt outs from the Settlement suggests the Settlement is fair,
14 adequate, and reasonable).

15 The lack of objections and opt outs indicates the Settlement is adequate.

16 **6. The Proposed Plan of Allocation is Fair and Reasonable**

17 Plans of allocation are subject to the same standard of review as class action settlements;
18 they must be “fair, adequate and reasonable.” *Officers for Justice*, 668 F.2d at pp. 624-25, 628-
19 30. The proposed plan of allocation of the settlement funds in this case is fair and reasonable,
20 and should be given final approval by the Court.

21 The Class Notice informed Class Members how all of the Settlement funds would be
22 allocated and the Class Members’ estimated individual recovery. Specifically, the Class Notice
23 explained the payment to the Class Members would be calculated based on the number of
24 workweeks worked during the Settlement Class Period. Apex Decl., Ex. A, pp. 2-3, V. This
25 formula is realistic because Settlement Class Members’ individual recovery is proportionate to
26 the amount of time they were employed with Defendant. Khoury Decl., ¶30. This plan of
27 allocation is fair and reasonable, and therefore warrants approval.

28 ///

1 **7. Uncashed Check Distribution is Proper**

2 Settlement checks will be valid and negotiable for 140 days. Settlement Agreement,
3 ¶X.B.12 (p. 25). After that time, the Parties will seek the Court’s approval to donate the funds
4 represented by uncashed checks, plus interest, to the State Controller’s Unclaimed Property
5 Fund to permit the affected Class Members to claim the funds in the future, pursuant to
6 California Code of Civil Procedure section 384(b). *Id.* In no event will any of the funds revert to
7 Defendants. *Id.*; Khoury Decl., ¶31. The Settlement Administrator will prepare a declaration
8 regarding the status of the settlement checks after the expiration of the 140-day cashing period.

9 **8. The Presence of Government Participant**

10 Most courts have granted final approval to settlements that settle PAGA claims without
11 directly addressing the “governmental participant” factor; instead, they have typically weighted
12 the appropriateness of the PAGA allocation to the LWDA as part of the overall amount offered
13 in the settlement. *Torchia v. W.W. Grainger, Inc.* (E.D. Cal. 2014) 304 F.R.D. 256, 263 n.2
14 (granting final approval to settlement that included \$7,500 for the LWDA to settle PAGA
15 claims out of a \$1.3 million net settlement and noting that the governmental participant factor
16 “does not weigh in the Court’s analysis because the government is not a party in this action”).
17 As the Court has already preliminarily approved the allocation of \$50,000 to cover claims for
18 civil penalties under PAGA when the Court granted Plaintiff’s Motion for Preliminary
19 Approval, the Court need not engage in any further analysis of the “governmental participant”
20 factor. The LWDA was timely served with the proposed Settlement Agreement in this action
21 and did not object to the amount of PAGA penalties. Khoury Decl., ¶29.

22 **B. The Class Received Adequate Notice**

23 The Court-approved Class Notice adequately protects the due process rights of all Class
24 Members, and satisfied California Rules of Court, Rules 3.766 and 3.769(f). The manner of
25 giving notice, and the content of the notice, must “fairly apprise the prospective members of the
26 class of the terms of the proposed settlement and of the options that are open to them in
27 connection with the proceedings.” *7-Eleven Owners*, 85 Cal.App.4th at p. 1164 (citations
28 omitted). Appropriate notices have a “reasonable chance of reaching a substantial percentage of

1 the class members.” *Wershba*, 91 Cal.App.4th at p. 251 (citation omitted).

2 Here, Plaintiff complied with the Court–approved Notice plan. The Notice was highly
3 informative, as it advised Class Members, in simple terms, of: (1) basic information about this
4 action and the Settlement; (2) an estimate of workweeks worked by Class Members during the
5 Settlement Class and Period and an explanation how Class Members can dispute this estimate;
6 (3) an estimate of the Individual Payment Amounts; (4) an explanation how Class Members can
7 exercise their right to opt-out from, or object to, the Settlement; (5) an explanation that any
8 claims against the Defendants that could have been litigated in this Action will be released if the
9 Settlement Class Member does not opt out; (6) the date of the Fairness Hearing and an
10 explanation of eligibility to appear at the Fairness Hearing; and (7) the telephone number Class
11 Members can use to obtain more information, as well as the website where settlement
12 documents are available. *See* Apex Decl., Ex. A.

13 Lastly, the Notice disclosed how much of the Settlement amounts would be allocated as
14 attorneys’ fees and costs, the Service Payment for the named Plaintiff, and the estimated
15 Settlement Administration Costs. Apex Decl., Ex. A at p. 3.

16 In sum, the Notice plan was carefully tailored to apprise Class Members of the
17 Settlement and this approval process. Thus, the Notice is reasonable and satisfies due process
18 and the requirements of California law.

19 **III. LEGAL BASIS FOR AN AWARD OF ATTORNEYS’ FEES AND COSTS**

20 The decision to award attorneys’ fees “is committed to the sound discretion of the trial
21 court.” *Olson v. Cohen* (2003) 106 Cal. App. 4th 1209, 1217. Under California law, the court
22 awards reasonable attorneys’ fees and costs when a litigant proceeding in a representative
23 capacity secures a “substantial benefit” for a class of persons. *Serrano v. Priest* (1977) 20 Cal.
24 3d 25, 38. The lodestar-multiplier method with a percentage of the fund cross-check is a
25 benchmark method for the determination of the attorneys’ fee award in a case such as this one,
26 where the fees are to be paid from a common settlement fund obtained for the benefit of the
27 class. *Hanlon v. Chrysler Corp.* (1999) 150 F.3d 1011, 1029; *Dunk v. Motor Ford Co.* (1996)
28 48 Cal.App.4th 1794, 1810. Class Counsel’s lodestar is the reasonable number of hours

1 expended for the services provided, multiplied by the reasonable hourly rate, calculated at
2 prevailing market rates for the same services. *Hensley v. Eckerhart* (1983) 461 U.S. 424, 433.
3 The lodestar figure may be then adjusted based on the consideration of specific factors, in order
4 to fix the fee award at the fair market value for the legal services provided in a contingent fee
5 case. *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556-57. These factors include
6 the novelty and difficulty of the questions presented; time and labor required; skill of the
7 attorneys; preclusion of other employment; contingent risk of the action; awards in similar
8 cases, and results achieved. However, it is not a strict formula, and the court need not discuss
9 each factor. *People ex rel. Dept. of Transp. v. Yuki* (1995) 31 Cal.App.4th 1754, 1771; *see also*
10 *Serrano*, 20 Cal.3d at p. 49.

11 Further, the percentage of the fund method is also a valuable tool to determine an
12 amount of a reasonable fee. *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503. The
13 awarding of a fee based on a percentage of the common fund recovered is to “spread litigation
14 costs proportionately among all the beneficiaries so that the active beneficiary does not bear the
15 entire burden alone.” *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.

16 Lastly, equity supports the award of attorney fees. Class actions serve the policy goals of
17 efficient judicial management; they set a procedure where one judgment covers all claimants,
18 ensuring the rights of citizens are exonerated, even where their individual claims are relatively
19 small and/or their financial means are lean, such that an attorney would be unlikely to accept the
20 financial risk of an individual representation. *Keating v. Super. Ct.* (1982) 31 Cal. 3d 584, 609
21 (reversed in part on other grounds). Accordingly, “it is well settled that the lawyer who creates a
22 common fund is allowed an extra reward...so that he might share the wealth of those upon
23 whom he has conferred a benefit.” *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886
24 F.2d 268, 271 (emphasis in original). Here, equity supports an award of attorneys’ fees and
25 costs, because without this class action, individual claims would likely never see the light of
26 day, nor achieve corrective measures or compensate a class.

27 **IV. FEE AWARD IS PROPER UNDER LODESTAR/MULTIPLIER METHOD**

28 The method for assessing whether a fee award in a wage and hour class action such as

1 this one is reasonable is the lodestar/multiplier method. A “strong presumption” exists that the
2 lodestar amount represents a reasonable fee. *Chavez v. Blue Sky Nat. Beverage Co.* (N.D. Cal.
3 June 1, 2012) 2012 WL 12921300, at *4, citing *Gates v. Deukmejian* (9th Cir. 1992) 987 F.2d
4 1392, 1397. The lodestar amount is calculated by multiplying all reasonable hours spent on the
5 case by Class Counsel’s reasonable hourly rate. *Hensley*, 461 U.S. at p. 433. The lodestar figure
6 can be then augmented or multiplied to reflect additional factors to consider in determining a
7 reasonable attorney fee award. *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043,
8 1048-50. The California Supreme Court confirmed this lodestar approach:

9 The reasonable hourly rate is that prevailing in the community for similar work. The
10 lodestar figure may then be adjusted, based on consideration of factors specific to the
11 case, in order to fix the fee at the fair market value for the legal services provided.

12 *PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095 (internal quotations omitted).

13 Here, consideration of Class Counsel’s lodestar strongly supports the reasonableness of
14 the requested fee award. Class Counsel seeks an attorneys’ fee award of \$329,999.67 whereas
15 Class Counsel’s lodestar in this case is \$298,587.00. Khoury Decl., ¶¶32, 34-36, 38-40; Mara
16 Decl., ¶¶10, 11; Davtyan Decl., ¶¶10, 11, 15, 16. The fee produced by the lodestar requires a
17 reasonable multiplier of 1.11. Khoury Decl., ¶41. Further, the 390.2 hours Class Counsel
18 expanded in this action are reasonable, as well as the out-of-pocket costs Class Counsel incurred
19 while prosecuting this action. Khoury Decl., ¶¶34-36, 48; Mara Decl., ¶¶10, 15; Davtyan Decl.,
20 ¶¶10-12.

21 **A. Counsel’s Hourly Rates are Reasonable**

22 Class Counsel is entitled to the hourly rates charged by attorneys of comparable
23 experience, reputation, and ability for similar litigation. *Ketchum v. Moses* (2001) 24 Cal.4th
24 1122, 1133. “Generally, the courts will look to equally difficult or complex types of litigation to
25 determine which market rates to apply.” *Syers Props. III v. Rankin* (2014) 226 Cal. App. 4th
26 691, 700. Payment at full market rates is essential to fulfill the goal of enticing qualified counsel
27 to undertake difficult complex litigation, such as this one. *San Bernardino Valley Audubon*
28 *Soc’y v. Cnty. of San Bernardino* (1984) 155 Cal. App. 3d 738, 755.

///

1 Here, Class Counsel has significant experience with complex wage and hour class action
2 cases and regularly litigates wage and hour claims justifying comparable fee awards in Superior
3 Courts throughout California. Khoury Decl., ¶¶3-9, 40; Mara Decl., ¶¶3-9, 13-14; Davtyan
4 Decl., ¶¶4-6. The accompanying declarations of Class Counsel set forth the hours of work and
5 billing rates used to calculate the lodestar. Khoury Decl., ¶¶34-36; Mara Decl., ¶¶10, 11, 15, 16;
6 Davtyan Decl., ¶¶10, 11. Attorney declarations are satisfactory evidence of prevailing market
7 rates. *Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375; *Welch v. Metro.*
8 *Life Ins. Co.* (9th Cir. 2007) 480 F.3d 942, 947.

9 Here, the requested hourly rates have already been approved by many courts in other
10 employment-related actions, where Plaintiff's counsel also served as a Class Counsel, and are in
11 line with the market rates throughout California. *See Schneider v. Chipotle Mexican Grill, Inc.*
12 (N.D. Cal. Nov. 4, 2020) 2020 WL 6484833, at *11 (finding that rates between \$425-\$695 for
13 associates, and \$830-\$1,275 for partners, are "in line with prevailing rates in this district for
14 personnel of comparable experience, skill, and reputation."); *see also Hefler v. Wells Fargo &*
15 *Co.* (N.D. Cal. Dec. 18, 2018) 2018 WL 6619983, at *14 (approving rates ranging from \$650 to
16 \$1,250 for partners or senior counsel, and \$400 to \$650 for associates); *In re Volkswagen*
17 *"Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.* (N.D. Cal. Mar. 17, 2017) 2017
18 WL 1047834, at *5 (approving billing rates ranging from \$275 to \$1600 for partners, \$150 to
19 \$790 for associates, and \$80 to \$490 for paralegals). Those rates are in line with the hourly rates
20 Class Counsel request here: \$650 to \$1,235 for attorneys and \$175-\$200 for paralegals. Khoury
21 Decl., ¶¶34, 45-46; Mara Decl., ¶¶11, 16; Davtyan Decl., ¶11. Class Counsel's skill and
22 experience justify these rates. Plaintiff's attorneys practice litigation with a focus on
23 representing employees in wage and hour class actions, are held in high regard by the legal
24 community, and their practice is a very specialized and high-risk area of law. *See Khoury Decl.*,
25 ¶¶3-9, 45-46; Mara Decl., ¶¶3-9, 13, 14; Davtyan Decl., ¶¶5-6.

26 **B. Counsel's Hours Spent on the Case are Reasonable**

27 Class Counsel are entitled to be compensated for reasonable time spent at all points in
28 the litigation. Reasonable hours include, in addition to time spent during litigation, the time

1 spent before the action is filed, including time spent interviewing the clients, investigating the
2 facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*
3 (1980) 447 U.S. 54, 62. Further, the fee award should include fees incurred to establish and
4 defend the attorneys' fee claim. *Serrano v. Unruh* (1982) 32 Cal.3d 621, 639.

5 Here, Counsel spent 390.2 hours litigating this case and bringing it to fruition. This
6 includes time billed investigating the claims and drafting pleadings, law and motion practice,
7 preparing for and attending mediation, court appearances, reviewing documents, researching
8 legal authorities, and extensive communications and meetings among the parties and counsel.
9 Khoury Decl., ¶¶34-36; Mara Decl., ¶¶10, 15; Davtyan Decl., ¶10. Further, Class Counsel will
10 incur additional billable hours of at least 10-20 hours to oversee the settlement distribution
11 process. Khoury Decl., ¶37; Davtyan Decl., ¶10. Thus, Class Counsel requests that the court
12 find that these hours were reasonably expended in this litigation.

13 **V. FACTORS JUSTIFYING THE APPROVAL OF THE REQUESTED ATTORNEY**
14 **FEE AWARD ARE SATISFIED**

15 In determining the reasonableness of a fee request (and a multiplier), the Court considers
16 a variety of factors, such as: (a) the results achieved; (b) the risk involved with the litigation; (c)
17 counsel's skill, experience, and quality of work; (d) the contingent nature of the fee; (e) awards
18 made in similar cases; (f) the reaction of the class; and (g) the comparison of the benchmark
19 with counsel's lodestar. *Craft v. Cty. of San Bernardino* (C.D. Cal. 2008) 624 F. Supp. 2d 1113,
20 1116-17; *Serrano*, 20 Cal.3d at p. 49. Here, those factors are satisfied.

21 **A. The Results Achieved**

22 "The total result and benefit to the class from the litigation is the most critical factor in
23 granting a fee award." *In re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d
24 1036, 1046; *Glendora Cmty. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 465, 475-76;
25 *Lealao v. Beneficial California* (2000) 82 Cal.App.4th 19, 40. Here, the all-cash Settlement
26 amount is \$999,999 without any risks, costs, and uncertainty of prolonged litigation. Class
27 Members need not do anything to receive a payment. As presented in Plaintiff's motion for
28 preliminary approval, which Plaintiff incorporates here by reference, the Settlement of \$999,999
represents 10% of New Bern's maximum realistic liability for Plaintiff's direct claims, and

approximately 6.57% of New Bern’s maximum realistic liability for all Plaintiff’s claims. This recovery is well within the range of recoveries approved by other courts. *Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2014) 303 F.R.D. 611, 623-24 (finding settlement amount of a wage and hour class action that equaled between 9% and 27% of the total potential liability was fair, adequate and reasonable given the uncertainty of continued litigation); *Thomas v. Cognizant Tech. Sols. U.S. Corp.* (C.D. Cal. June 24, 2013) 2013 WL 12371622, at *6 (granting final approval in wage and hour action where settlement encompassed between 4.4% and 5% of the Gross estimated liability figure); *Stovall-Gusman v. W.W. Granger, Inc.* (N.D. Cal. June 17, 2015) 2015 WL 3776765, at *4 (granting final approval where total settlement amount represented approximately 10% of potential value). Simply put, “the fact that a proposed settlement may only amount to a fraction of the potential recovery does not... mean that [it]...should be disapproved.” *7-Eleven Owners*, 85 Cal.App.4th at p. 1150 (citation omitted).

This Settlement provides substantial relief to all Class Members without further delay, and without the risks associated with arbitration proceedings, trial, and appeal. *See* Khoury Decl., ¶¶19-20. Thus, the results achieved weigh in favor of granting the requested attorneys’ fees.

B. The Risk Involved with the Litigation

The risk that further litigation might result in no recovery for Plaintiff is an important factor to consider in the award of fees. Here, the average settlement award is approximately \$298.95 and the highest \$586.74, which Class Members will obtain without any further litigation. *Apex Decl.*, ¶16. Plaintiff acknowledges his claims face substantial difficulties, and there are substantial risks that the continued litigation would not yield a better result than this settlement. *Khoury Decl.*, ¶¶19-20.

First, as a preliminary matter, in 2019, New Bern settled a similar California driver action for \$5,000,000 in *Helton v. Pepsi-Cola Sales and Distribution, Inc., et al.*, Case No. 3:17-cv-01135-EMC (N.D. Cal.). That settlement predated the Federal Motor Carrier Safety Administration (“FMCSA”)’s preemption of California meal and rest break claims. New Bern contends that, following *Helton*, it implemented measures addressing the challenged pay and

1 break practices, substantially reducing its potential liability. Khoury Decl., ¶21.

2 Regarding the off-the-clock claims, New Bern argues its policies prohibit off-the-clock
3 work, require drivers to record all on-duty time, provide an anonymous HR hotline for reporting
4 violations, and that drivers could clock in remotely using company-issued devices. It also
5 contends staggered start times minimized any timeclock delays. Khoury Decl., ¶22.

6 As to meal and rest periods, New Bern asserts the claims are preempted by the FMCSA
7 and that it had no actual or constructive knowledge of employees working through breaks.
8 Khoury Decl., ¶23. It further notes that a review of class timecards showed 96% compliant meal
9 periods, likely insufficient to invoke the presumption under *Donohue v. AMN Services, LLC*
10 (2021) 11 Cal.5th 58. *See Smith v. 9W Halo W. OpCo L.P.* (N.D. Cal. Mar. 28, 2025) 2025 U.S.
11 Dist. Lexis 59497, at **10-12.

12 New Bern also argues Plaintiff's sick pay claim is based on a single instance in which a
13 mid-week raise resulted in sick pay being calculated at the lower rate, rendering the claim *de*
14 *minimis*. Khoury Decl., ¶24.

15 As to Labor Code section 2802, New Bern contends drivers were issued company
16 phones and could seek reimbursement for any personal phone expenses through an internal
17 portal. Khoury Decl., ¶25.

18 Regarding uniform maintenance, New Bern asserts it provided uniforms and annual
19 replacement shoes at no cost. Khoury Decl., ¶26. It argues employers must reimburse
20 laundering expenses only when uniforms require special care. *See O'Connor v. Starbucks Corp.*
21 (N.D. Cal. July 14, 2008) 2008 U.S. Dist. Lexis 53877, at *10; *Morales v. Paschen Mgmt.*
22 *Corp.* (C.D. Cal. Sept. 27, 2019) 2019 U.S. Dist. Lexis 208588, at *33. It further contends any
23 unreimbursed expense claim fails where reimbursement was never requested. *See Hammit v.*
24 *Lumber Liquidators* (S.D. Cal. 2014) 19 F. Supp. 3d 989, 1001. Khoury Decl., ¶27.

25 Finally, New Bern argues Plaintiff's wage statement and waiting time penalty claims are
26 derivative of the underlying wage-and-hour claims. Khoury Decl., ¶28. If those claims fail, the
27 derivative claims fail as well. *See Gomez v. Lincare, Inc.* (2009) 173 Cal. App. 4th 508, 524–25.
28 New Bern also contends unpaid wages cannot support derivative penalties under *Maldonado v.*

1 *Epsilon Plastics, Inc.* (2018) 22 Cal. App. 5th 1308, 1336–37. *Id.*

2 Plaintiff faced a substantial risk that his claims would be stayed and/or dismissed (and
3 not proceed in court on a class basis) if the litigation continued. Although the named parties
4 were not bound by individual arbitration agreements, many putative class members were
5 unionized and subject to collective bargaining agreements containing arbitration provisions and
6 requirements to grieve the claims at issue, and their claims may even be preempted under the
7 Labor Management Relations Act. Thus, this risk factor weighs in favor of awarding the
8 requested attorneys’ fees.

9 **C. Counsel’s Skill, Experience, and Quality of Work**

10 “The prosecution and management of a complex class action require unique legal skills
11 and abilities.” *Knight v. Red Door Salons, Inc.* (N.D. Cal. Feb. 2, 2009) 2009 WL 248367, at *6,
12 citing *Edmonds v. United States* (D.S.C. 1987) 658 F.Supp.1126, 1137. Here, Class Counsel has
13 decades of experience in prosecuting complex class actions - in particular class actions for
14 violations of state and federal wage and hour laws - and has achieved settlements amounting to
15 hundreds of millions of dollars on behalf of class members. Class Counsel has been lead or co-
16 lead counsel in hundreds of class action cases in California and throughout the United States,
17 and was counsel of record in over thirty reported appellate cases. Khoury Decl., ¶¶3-9, 40; Mara
18 Decl., ¶¶3-9, 13, 14; Davtyan Decl., ¶¶5-6. Thus, this factor supports the requested attorneys’
19 fees.

20 **D. The Contingent Nature of the Fee**

21 Courts have long recognized the public interest is served by rewarding attorneys who
22 assume representation on a contingent basis with an enhanced fee to compensate them for the
23 risk they might be paid nothing at all for their work. *See Greene v. Dillingham Constr. NA., Inc.*
24 (2002) 101 Cal.App.4th 418, 428-29. Without the premium incentives for risk, most attorneys
25 would not accept cases on a contingency basis. Thus, a “contingent fee must be higher than a
26 fee for the same legal services paid as they are performed.” *Ketchum v. Moses* (Cal. 2001) 24
27 Cal.4th 1122, 1132-33.

28 ///

1 Here, Class Counsel prosecuted this case on a contingent basis, agreeing to advance all
2 necessary expenses and taking a risk that they would not get paid at all if there is no recovery.
3 Class Counsel's outlay of time and money in this case has been considerable. Class Counsel
4 have spent 390.2 hours investigating, analyzing, researching, litigating, and negotiating a
5 favorable resolution of this case, and have incurred \$25,033.74 in necessary litigation expenses.
6 Khoury Decl., ¶¶17, 32, 34-36, 48; Mara Decl., ¶¶10, 15, 17, Ex. 1; Davtyan Decl., ¶12.

7 Class Counsel expended these resources despite the risk they may never be compensated
8 at all. Class Counsel's "substantial outlay, when there is a risk that none of it will be recovered,
9 further supports the award of the requested fees" here. *In re Omnivision*, 559 F. Supp. 2d at p.
10 1047. Thus, this factor favors award of the requested attorneys' fees.

11 **E. Awards Made in Similar Cases**

12 Here, Plaintiff's counsel is seeking one-third of the Gross Settlement Amount in
13 attorneys' fees, which is the typical fee request frequently approved by the California state
14 courts. "A 33% fee award is both reasonable, and in line with the general market for contingent
15 fee work." *Craft*, 624 F.Supp. at p. 1124; *See Laffitte*, 1 Cal.5th at pp. 480, 486, 506 (one-third
16 of the settlement fund in attorneys' fees affirmed); *Vasquez v. Coast Valley Roofing, Inc.* (E.D.
17 CA 2010) 266 F.R.D. 482, 491-92 (33.33% of the common fund in attorneys' fees awarded);
18 *Fernandez v. Victoria's Secret Stores* (C.D. Cal. July 21, 2008) 2008 WL 8150856, at *11
19 (awarding 34% of the common fund); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1,
20 2010) 2010 WL 2196104, * 8 (approving fee award of 33.33% of the common fund and holding
21 that award was similar to awards in three other wage and hour class action cases where fees
22 ranged from 30.3% to 40%); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007)
23 2007 WL 3492841, at *1, 3-4 (approving fee award of 33% of the class recovery in wage and
24 hour class action involving allegations of unpaid wages and missed meal and rest breaks for a
25 class of delivery drivers).

26 In sum, at one-third of the Gross Settlement Amount, the fee award sought here, is
27 within the range of the fees frequently awarded in class action cases. Thus, \$329,999.67 of the
28 Gross Settlement Amount in attorneys' fees is warranted.

F. The Reaction of the Class

The reaction of the class may also be taken into account when determining the reasonableness of a fee request. *Nat'l Rural Telecomm. Coop. v. Direct TV, Inc.*, 221 F.R.D. at p. 529 ("It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.").

Here, the court-approved notice, clearly and explicitly stating the intention of Class Counsel to request \$329,999.67 in attorneys' fees, was mailed to all Class Members on June 4, 2026. Apex Decl., ¶7, Ex. A, p. 3, VI.A. To date, only two Class Members opted out of the Settlement, and not a single one objected to it. *Id.* at ¶¶11, 12. The absence of any objection to the request of attorneys' fees, after notice, indicates its reasonableness. *In re Immune Response Sec. Litig.* (S.D. Cal. 2007) 497 F. Supp. 2d 1166, 1177. Thus, this factor supports an award of the requested attorneys' fees.

G. The Comparison of the Benchmark with Counsel's Lodestar

Courts often compare an attorney's lodestar with a fee request made under the percentage of the fund method as a "cross-check" on the reasonableness of the requested fee. *See Vizcaino*, 290 F.3d at p. 1050; *Lealao*, 82 Cal.App.4th at pp. 49-50; *In re Consumer Privacy Cases*, 175 Cal.App. at p. 557.

Here, Plaintiff's attorneys spent 390.2 hours to achieve the Settlement, resulting in a total lodestar of \$298,587.00. Khoury Decl., ¶¶34-36. Typically, when the lodestar is lower than the percentage of the fund sought, courts apply multipliers to augment the lodestar to arrive at the fair market rate for attorney services. *Greene*, 101 Cal.App.4th at p. 427. Here, the multiplier is a reasonable figure of 1.11. *See* discussion in Section VI, below. Thus, this factor confirms the reasonableness of the requested fee award.

VI. A MULTIPLIER OF 1.11 IS REASONABLE

To determine if a lodestar multiplier is reasonable, California courts consider many of the same factors (discussed in Sections A-G above) they review to decide if the percentage of the fund recovery is reasonable. *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012

WL 2117001, at *16. As discussed above, all these factors support the 1.11 multiplier Class Counsel seek. “Multipliers can range from 2 to 4, or even higher.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255. “The customary range for multipliers is between 1.0 and 4.0.” *Kim v. Space Pencil, Inc.* (N.D. Cal. Nov. 28, 2012) 2012 WL 5948951, at * 7 (citing *Vizcaino*, 290 F.3d at p. 1051, n. 6)).

In *Vizcaino*, 290 F.3d 1043, the court approved a multiplier of 3.65, and in an appendix to the opinion, determined that a range of multipliers in common fund cases is generally between 0.6 and 19.6, with most cases having multipliers between 1.0 and 4.0, and a bare majority between 1.5 and 3.0. *Id.* at p. 1052.

Other courts agree: *Keith v. Volpe* (C.D. Cal. 1980) 501 F.Supp.403, 414 (multiplier of 3.5); *In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 512 (multiplier of 2.52 found “fair and reasonable”); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (multiplier of 2.5 was not “out of line with prevailing case law.”); *Boyd v. Bank of Am. Corp.* (C.D. Cal. 2014) 300 F.R.D. 431 (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.* (C.D. Cal. 2014) 8 F. Supp. 3d 1200, 1210 (awarding 33% of the common fund, based on a multiplier of 2.52 as “well within the range of acceptable multipliers in a common fund case.”).

Here, the multiplier is 1.11, within the range of the multipliers frequently approved by California courts, which further confirms the reasonableness of the requested fee award. Khoury Decl., ¶41.

VII. CLASS COUNSEL’S COSTS WERE REASONABLY INCURRED

As part of the Settlement Agreement, the Parties agreed that Class Counsel shall recover their actual litigation costs incurred from the Class Settlement Amount, not to exceed \$25,000. Settlement Agreement, ¶X.F(e). It is well settled that lawyers whose efforts resulted in creating a common fund for the benefit of the class are entitled to recover reasonable costs incurred in successful prosecution of the action. *In re Media Vision Tech. Sec. Litig.* (N.D. Cal.1996) 913 F.Supp. 1362, 1366; *Wininger v. SI Mgmt., L.P.* (9th Cir. 2002) 301 F.3d 1115, 1120–21.

Here, Class Counsel’s actual litigation costs are \$25,033.74. These expenses were necessary for this litigation and include the amounts paid for court filing fees, mediation fees and costs, research and delivery charges, all of which are costs normally billed to and paid by the client. These costs were reasonably incurred in the prosecution of this matter and are authorized by the Settlement Agreement. The details of those costs are set forth in Class Counsel’s declarations. Khoury Decl., ¶48; Mara Decl., ¶17; Davtyan Decl., ¶12. Plaintiff requests the Court award Plaintiff’s counsel the \$25,000 maximum amount of costs per the terms of the Settlement Agreement.

VIII. CLASS REPRESENTATIVE’S SERVICE AWARD IS FAIR

Plaintiff Angel Cuellar requests approval of the proposed Service Payment of \$10,000 for his time and effort in representing the Class. Settlement Agreement, ¶X.F(b). “Incentive awards [for class representatives] are fairly typical in class actions.” *In re Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393, citing *Rodriguez v. West Publ’g* (9th Cir. 2009) 563 F.3d 948, 958. California courts agree that a class representative is entitled to such an award. *In Re Cellphone Termination*, 186 Cal.App.4th at p. 1394. “Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit could be thought the equivalent of the lawyers’ nonlegal but essential case-specific expenses, such as long-distance phone calls, which are reimbursable.” *Clark v. Am. Residential Servs.* (2009) 175 Cal.App.4th 785, 804, citing *Matter of Cont’l Ill. Sec. Litig.* (7th Cir. 1992) 962 F.2d 566, 571.

The requested Service Award is warranted based on: (1) the amount of time Plaintiff spent on behalf of the Class; (2) the fact that Plaintiff made his private employment information public, and will bear the stigma of bringing a class action wage dispute against an employer, a large corporation; and (3) the fact that Plaintiff subjected himself to the risks associated with litigation, including the risk of being liable for Defendant’s litigation costs. *See* Cuellar Decl., ¶¶5-12. This last factor is a significant one for a wage earner, and the potential risk is very real. *See Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) 2007 WL 4531783, at *3 (“the few courts to consider this ‘class representatives’ dilemma’ have not found

1 it inequitable to assess costs upon the lead or named plaintiff in a class action.”).

2 Here, the requested Service Award of \$10,000 to Plaintiff is just and reasonable. It is
3 based on the extent of Plaintiff’s participation in this action, and is not conditioned upon
4 Plaintiff’s support of the settlement. *Cf. Radcliffe v. Experian Info. Solutions, Inc.* (2013) 715
5 F.3d 1157, 1165. Plaintiff devoted approximately 65-75 hours to the litigation of this case.
6 Cuellar Decl., ¶8. Plaintiff spent significant time on pre-litigation investigation and
7 correspondence, document search and review, interviews and correspondence with his
8 attorneys, being on standby and providing information during mediation, and reviewing
9 settlement documents and preparing declarations. Plaintiff sacrificed time away from his family,
10 and lost wages from his current employment, and endured emotional strain and hardships to
11 participate in this case. *Id.* at ¶¶8-12. Further, Plaintiff risked his professional reputation and
12 future employment prospects by participating in this action by potentially being perceived as an
13 employee who sues his employer. *Id.* at ¶6. Further Plaintiff signed a general release and waiver
14 of claims of every nature and description, which is a broader release than unnamed Class
15 Members’. *Id.* at ¶13; *see also Richardson v. THD At-Home Services, Inc.* (E. D. Cal. Apr. 6,
16 2016) 2016 WL 1366952, at *13.

17 Further, courts award incentive awards in – and above - this range. *Dearaujo v. Regis*
18 *Corp.* (E.D. Cal. July 21, 2017) 2017 WL 3116626, at *9, *15 (awarding a \$15,000 incentive
19 award which was over 15 times the average per class member recovery in a wage and hour class
20 action); *Ross v. U.S. Bank Nat’l Ass’n* (N.D. Cal. Sept. 29, 2010) 2010 WL 3833922, at *3
21 (approving an award of \$20,000 to each of four named plaintiffs based on their contributions to
22 litigation and the risk that being a class representative would harm their reputation); *see also*
23 *Ridgeway v. Wal-Mart Stores Inc.* (N.D. Cal., Sept. 14, 2017) 2017 WL 4071293, at *19
24 (\$15,000 incentive awards for each of the named plaintiffs awarded); *Low v. Trump University,*
25 *LLC* (S.D. Cal. 2017) 246 F.Supp.3d 1295, 1316 (\$15,000 incentive award approved where
26 plaintiffs “devoted significant amounts of time and energy” to the action).

27 In sum, Plaintiff contributed substantially to securing a favorable settlement for Class
28 Members. Plaintiff has no conflicts of interest with any members of the Class, and has

1 represented the best interests of the class as a whole. Cuellar Decl., ¶¶3, 5.

2 Lastly, as of today's date, none of the Class Members objected to the requested service
3 payment, and it can therefore be inferred that Class Members do not oppose this award. Apex
4 Decl., ¶12; *see also Martin v. AmeriPride Servs., Inc.* (S.D. Cal. June 9, 2011) 2011 WL
5 2313604, at *9. Thus, the requested service payment to Plaintiff is justified and proper.

6 **IX. CONCLUSION**

7 Class Counsel respectfully requests the Court grant final approval of the Settlement and
8 award the requested attorneys' fees and costs and Plaintiff's service award.

9 Respectfully submitted,

10 COHELAN KHOURY & SINGER
11 D.LAW, INC.
12 MARA LAW FIRM, PC

13 Dated: August 24, 2026

14 By: _____

15 Maggie K. Realin

16 Attorneys for Plaintiff Angel Cuellar, on
17 behalf of himself and all others similarly situated
18
19
20
21
22
23
24
25
26
27
28