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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

GREGORY FERNANDEZ, individually, and
on behalf of other members of the general
public similarly situated,

Plaintiff

v.

PERFORMANCE SYSTEMS
INTEGRATION, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants

Case No. 24CV444501

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S *UNOPPOSED* MOTION FOR
FINAL APPROVAL OF (1) CLASS
ACTION AND PAGA SETTLEMENT; (2)
ATTORNEY'S FEES AND COSTS; and (3)
CLASS REPRESENTATIVE SERVICE
PAYMENT**

Date: October 15, 2026

Time: 1:30 p.m.

Dept.: 22

Judge: Hon. Beth McGowen

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I. SUMMARY OF MOTION

This motion seeks final approval of a “Wage and Hour” representative (*i.e.*, “PAGA”) and Class Action settlement. Plaintiff GREGORY FERNANDEZ (“Plaintiff”) claims on behalf of a class of nonexempt employees who worked for the named Defendant during the operative class period, set forth herein.

Following approximately **14 months** of formal litigation, exchanges of informal discovery and data, a full-day of Mediation, and extensive arms length negotiations, the Parties agreed to the terms of a class and PAGA action settlement. Following the distribution of the approved Notice to the class, the proposed final settlement figures are as follows:

Final size of potential class:	196 Participating Class Members
Objections to Settlement:	Zero (0)
Opt-Outs:	One (.005%)
Gross settlement amount (“GSA”):	\$375,000.00
Claims administration:	\$7,850.00
Costs/expenses of litigation:	\$11,346.48
LWDA payment:	\$24,375.00 (65 % Share of \$37,500.00 allocation)
Attorneys’ fees:	\$125,000.00 (1/3 of total)
Class representative incentives:	\$10,000.00

There have been no (zero) objections to this proposed settlement. The *average* gross payment to each participating Class Member based on the above figures is **\$935.22**, which does not account for the fact that certain class members will receive more or less than an “average” share, depending on the length of time each worked for Defendant during the Class Period. (Please see the declaration of Settlement Administrator Nicole Bench at ¶17).

II. UPDATED FACTUAL AND PROCEDURAL HISTORY

Should the Court deem it relevant, a much more detailed procedural history of the case, and summary of all claims, was already set forth in Plaintiff’s Motion for Preliminary Approval. (ROA #26). The Court **granted** Preliminary Approval of the parties’ settlement on April 9, 2026. (ROA #34).

1 The signed preliminary approval order was entered April 13, 2026. (ROA # 37).

2 As was detailed more fully in the prior motion, after over a year of active litigation, the parties
3 attended a highly adversarial mediation, presided over by a well respected “Wage and Hour” mediator
4 (Anthony F. Pantoni). (ROA #26, § II). As of October 14, 2025, the Parties agreed on all final terms
5 of the settlement and fully executed the Class Action and PAGA Settlement Agreement (“Settlement
6 Agreement” or “Agreement”).

7 Most importantly for purposes of final approval, zero employees (out of 197 individuals)
8 objected, and only one employee have “opted out.” (Bench decl. ¶¶ 12-13). Thus, the class
9 overwhelmingly supports the proposed settlement.

10 The parties’ Settlement Agreement contains the terms of the class action and PAGA settlement
11 and is already on file with the Court. (ROA #18: **Exhibit A** thereto). For ease of reference, the
12 Agreement will be cited to herein again as Agreement or Exhibit A)¹.

13 **III. SETTLEMENT TERMS**

14 The Agreement includes the following key terms:

15 **1. Contingent Nature of the Settlement**

16 The parties entered into the Agreement exclusively for the purpose of resolving the action and
17 facilitating the negotiated settlement. Should the Court, for any reason, not finally approve the
18 Agreement, or if the Agreement is terminated for any reason, the Agreement will be null and void and
19 this action will revert to its status with respect to any and all matters as they existed prior to the parties
20 signing the Agreement. (**Ex. A** at ¶10.5).

21 **2. Description of the Settlement Classes**

22 Solely for the purposes of the Agreement, the parties have agreed that the term “Class
23 Member” is defined as:

24 all current and former non-exempt employees who worked for Defendant in
25 California as a non-exempt employee at any time during the period from August
26

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

1 2, 2020 through July 12, 2025. (**Ex. A** at ¶1.5, 1.12).

2 The Parties have agreed that “Aggrieved employees” are defined as:

3 all current and former non-exempt employees who worked for Defendant in
4 California as a non-exempt employee at any time from August 1, 2023 through
5 July 12, 2025. (**Ex. A** at ¶1.4).

6 Class Notices were sent to 197 individuals, as determined by Defendants’ employment records.
(Bench decl. ¶ 6). One (1) Class Member opted out of the litigation. (Bench decl. ¶ 12). **No (zero)**
7 Class Members have objected to the proposed settlement. (Bench decl. ¶13). Following the Notice,
8 there are a total of 196 Class Members who will all receive a share of the settlement proceeds. (Bench
9 decl. ¶ 15).

10 **3. Appointment of Settlement Claims Administrator**

11 ILYM Group, Inc. was used as the “Administrator” for purposes of providing the Notice (and
12 its instructions) to Settlement Class Members, issuing all payments pursuant to the Agreement, and
13 to track all opt-outs and objections to the settlement.

14 As detailed in the accompanying declaration, ILYM successfully completed all steps of the
15 Notice process and is prepared to distribute payments pursuant to this Court’s Final Orders. (See
16 Bench decl.¶¶ 3-19).

17 **4. Scope of the Release**

18 For purposes of the Agreement, Class Members release all claims that are: (1) alleged in the
19 First Amended Complaint (“FAC”); or Plaintiff’s PAGA Notice; and (2) which relate to or arise out
20 of the allegations and claims asserted in the FAC or Plaintiff’s PAGA Notice and could have been
21 alleged in the FAC or Plaintiff’s PAGA Notice relating in any way to violations of the wage and hour
22 provisions of the California Labor Code or the California Wage Orders, or any wage and hour
23 provisions of California law. The precise release language is reflected in **Exhibit A** at ¶ 5.3.

24 **5. Cash Payment and Allocation**

25 The Agreement provides for an automatic Individual Class Payment to the members of the
26 Class who do not submit valid requests for exclusion. The settlement is non-reversionary, in that all
27 of the Net Settlement Amount, after all costs and fees are deducted, will be paid to the participating
28

1 Class Members. (**Ex. A** at ¶3.1).

2 Based on the final counts after the notice period, Participating Class Members will be entitled
3 to an average share of approximately **\$935.22**. (Bench decl. ¶ 17). The actual amounts received vary
4 based on a Class Member's Workweeks during the Class Period. The highest estimated payout is
5 **\$2,885.96** and the lowest amount is **\$11.27**. (Bench decl. ¶ 17).

6 The settlement checks returned as undeliverable and those settlement checks remaining
7 un-cashed for more than one hundred eight (180) calendar days after issuance shall be canceled by the
8 Administrator, and the funds associated with such cancelled checks shall be transmitted by the
9 Administrator pursuant to governing law to the California State Controller Unclaimed Property fund
10 to be held there for the benefit of such Class Members under California's escheatment laws. (**Ex. A**
11 at ¶4.3.3). The Parties agree this disposition results in no "unpaid residue" under California Civil
12 Procedure Code § 384(b), as the entire Net Settlement Amount shall be paid to Participating Class
13 Members, whether or not their Individual Class Payment checks are cashed.

14 **6. Contingent Costs**

15 The Agreement provides for One Hundred Twenty-Five Thousand (**\$125,000.00**) in Attorneys'
16 Fees, which is one-third (1/3%) of the total Settlement, and up to Twenty-Five Thousand Dollars
17 (\$25,000.00) in litigation costs. (See **Exhibit A** at ¶3.4). The actual costs between Plaintiff's counsel
18 totals **\$11,346.48**. (Yaeckel decl. ¶ 29).

19 For costs incurred in administering the Settlement, the Agreement provides for an estimated
20 Seven Thousand Eight Hundred Fifty Dollars (\$7,850.00), or less. (See **Exhibit A** at ¶3.5). Defendants
21 will pay the actual costs, quoted at **\$7,850.00**, out of the settlement amount to the Administrator out
22 of the Gross Settlement Amount. (Bench decl. ¶ 19).

23 Defendant also agrees to allocate Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00)
24 to Plaintiff's PAGA claims with 65% of the amount, or Twenty-Four Thousand Three Hundred
25 Seventy-Five Dollars (\$24,375.00) being paid to the LWDA, and 35%, or \$13,125.00, being
26 distributed amongst the Aggrieved Employees. (See **Exhibit A** at ¶3.7).

27 Defendant also agrees to pay Plaintiff Fernandez Ten Thousand Dollars (**\$10,000.00**), which
28

1 represents a Class Representative Service Payment in consideration for his services as Class
2 Representative. (See **Exhibit A** at ¶ 3.3). The class was notified of the payment to Plaintiff and did not
3 object. (See Bench decl.: **Ex. A** at § IV(B)). The enhancement award was decided pursuant to good
4 faith negotiations and is intended to recognize that it was the class representative who initiated the
5 lawsuit, initiated the PAGA claims, provided critical documents and witnesses to his attorneys, and
6 worked with his attorneys to propound and prepare written discovery, all in an effort to obtain moneys
7 allegedly owed not only to himself, but to all other employees. For further justification of the
8 enhancement, please see the attached declaration of Mr. Fernandez.

9 **IV. CONTROLLING LAW**

10 The following facts and law support this undisputed request.

11 **A. FINAL APPROVAL OF CLASS ACTION SETTLEMENTS**

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

14 Fairness is presumed where (1) the settlement is reached through arm's-length bargaining; (2)
15 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
16 is experienced in similar litigation; and (4) the percentage of objectors is small. *Chaves v. Netflix, Inc.*,
17 (2008) 162 Cal.App.4th 43, 52; *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794, 1802. But, even
18 where it appears the settlement is fair, the court must still determine whether the settlement should be
19 approved after considering "the strengths and weaknesses of the claims and risks of the particular
20 litigation." *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 129. It considers: (i) the
21 strength of the plaintiff's case; (ii) the risks, expense, complexity and likely duration of further
22 litigation; (iii) the risk of maintaining class action status throughout the trial; (iv) the amount offered
23 in settlement; (v) the extent of discovery completed; (vi) the stage of the proceedings; (vii) the
24 experience and views of counsel; (viii) the presence of a governmental participant; and (ix) any
25 reaction of putative class members. *Dunk, supra*, 48 Cal.App.4th, at 1800-1801; *In re Microsoft*,
26 *supra*, 135 Cal.App.4th, at 723.

27 The court should approve a class action settlement when the settlement is fair and falls "within
28

the range of reasonableness.” *Hernandez v. Vitamin Shoppe*, (2009) 174 Cal.App.4th 1441, 1446.

B. ATTORNEYS’ FEES

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

The California Supreme Court’s rationale was as follows:

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

The Court also determined that while permissible, a lode-star “cross check” of the percentage method was **not** required of California’s trial courts. *Id.* at 506.

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

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

Id. at 494 (emphasis added).

Finally, “regardless whether the percentage method or the lodestar method is used, **fee awards in class actions average around one-third of the recovery.**” *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 66, n.11 (2008); See e.g., *In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 463 (upholding award of 33.3 percent of the settlement fund).

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

9 C. CLASS REPRESENTATIVE ENHANCEMENTS

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

11 In determining whether to make an incentive award, the court may consider (1) the risk, both
12 financial and otherwise, the class representative faced in bringing the suit; (2) the notoriety and
13 personal difficulties encountered by the class representative; (3) the amount of time and effort spent
14 by the class representative; (4) the duration of the litigation; and (5) the personal benefit received by
15 the class representative as a result of the litigation. *Golba v. Dick's Sporting Goods, Inc.* (2015) 238
16 Cal.App.4th 1251, 1270 citing *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380,
17 1394-1395.

18 Additional factors to consider include:

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

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

27 V. ARGUMENT

28 A. THE PROPOSED SETTLEMENT IS MADE IN GOOD FAITH

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

1. Strength of Plaintiff’s Case and Investigation and Discovery

The most important factor courts consider when evaluating the fairness of the class action

1 settlement is the strength of the plaintiff's case balanced against the amount offered in settlement.
2 *Kullar, supra*, 168 Cal.App.4th at 130.

3 This is a class and representative action, with Plaintiff's claims premised on Labor Code
4 violations, established (in part) from Defendant's uniform policies. *Brinker Rest. v. Superior Court*,
5 (2012) 53 Cal. 4th 1004, 1051 (holding that, where a company's uniform policy prohibits off-the-clock
6 work, certification of claims for such off-the-clock work is inappropriate, especially where the court
7 is merely "presented with anecdotal evidence of a handful of individual instances in which employees
8 worked off the clock.") Thus, Plaintiff's counsels' approach was to investigate Defendant's uniform
9 employment policies by, *inter alia*, scrutinizing putative class members' time and wage records, as well
10 as Defendant's written meal and rest period policies.

11 As detailed more thoroughly in the preliminary approval motion, extensive informal discovery
12 occurred, followed by additional informal exchanges prior to mediation. (See ROA # 26 at § II).

13 Plaintiff obtained verified copies of Defendant's time keeping, employee compensation, Meal
14 Period, Rest Period, and reimbursement policies. In addition to Plaintiff's time and wage records,
15 Defendant also produced a large electronic sampling of class member's records. Including "outside"
16 documentation, Counsel reviewed over tens of thousands of pages of electronic documents. Through
17 this review, Plaintiff's counsel was able to analyze and verify the following: Defendant's
18 "timekeeping" and compensation practices and the average net effect it had on Defendant's nonexempt
19 employees; the format and content of Defendants' itemized wage statements; the average rate of pay
20 for Defendants' nonexempt employees; and the average number of apparent meal period violations per
21 employee based on multiple sets of timekeeping data.

22 From this data, a detailed valuation of all claims was performed, and was presented to this
23 Court at the preliminary approval stage. (See ROA # 26 at § IV, and the declaration of Eric K. Yaeckel
24 in Support of Preliminary Approval).

25 While Plaintiff maintained the claims were all viable, Plaintiff (and counsel) recognize there
26 were substantial risks to proceeding on behalf of a class and representative group. Defendant presented
27 several potentially valid defenses to certification, liability and mitigation of damages. (Yaeckel
28

Decl. ¶ 11).

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

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

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

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

3. The Experience and Views of Counsel

Class Counsel has considerable experience in wage and hour and class action litigation. Mr. Sullivan (who is currently and temporarily unavailable, due to a medical issue), estimates that, throughout the course of his 31-year career, he has acted as Lead Plaintiffs' counsel on "Wage and Hour" Class/Representative actions that have collected more than \$300 million for employees and/or the State of California, either through judgment following trial, or via negotiated settlement. (Yaeckel decl. ¶ 3).

Mr. Eric Yaeckel has over 14 years of experience as an attorney who is primarily engaged in prosecuting class and representative actions. Mr. Yaeckel is one of the attorneys of record in a matter very recently (and favorably) decided before the California Supreme Court titled *Donohue v. AMN*

Services, LLC, 11 Cal.5th 58 (2021). The *Donohue* matter is a certified class and PAGA action. Mr. Yaeckel also has specific trial experience in several PAGA representative action matters. (Yaeckel decl. ¶ 4-5).

Mr. Cody Archer has over 1 year of experience as an attorney who is primarily engaged in prosecuting class and representative actions. He has been the “lead associate” on numerous class action cases that have settled. (Yaeckel decl. ¶ 4).

Lead co-counsel Capstone Law APC was founded in 2012 and is a leading firm in employment class and PAGA actions. (Perez decl. ¶¶2-8). The firm has handled numerous large and extensively litigated class action cases, and has repeatedly been found “adequate” to act as class counsel by numerous California State and District Courts. (Perez decl. ¶¶9-10).

Based on a detailed analysis of all the claims and the risks involved in continuing litigation, class counsel each submit the **\$375,000.00** Gross Settlement Fund represented a fair, and more than reasonable, settlement. (Yaeckel decl. ¶11).

4. Presence of a Governmental Actor

Although the State is not directly involved in this action, Plaintiff “stands in the shoes” of the Labor and Workforce Development Agency (“LWDA”) by bringing a PAGA action. Consideration has been made to compensate to Labor Workforce Development Agency (“LWDA”) in the amount of \$24,375.00 (which is the LWDA's 65% share of a \$37,500.00 allocation).

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

5. Reaction of the Class Members to the Proposed Settlement

A total of **197** members of the settlement class were notified and only one (1) members requested exclusion and opted out of the class. (Bench decl. ¶¶ 6, 12).

Perhaps most importantly, **there have been No (Zero) objections to the terms of the proposed settlement.** (Bench decl. ¶ 13).

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

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

Plaintiffs will seek, and Defendant will not oppose, a payment of One Hundred Twenty-Five Thousand (**\$125,000.00**) in Attorneys’ Fees, which is one-third (1/3%) of the total Gross Settlement Amount.

The agreement also calls for up to Twenty-Five Thousand Dollars (\$25,000.00) in litigation costs. However, Plaintiff will be seeking less in the total amount of **\$11,346.48**. (\$9,438.69 to SYLG and \$1,907.79 to Capstone Law Group). (Yaeckel decl. ¶ 29).

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

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

In the instant matter, Plaintiff’s Counsel was retained on a contingency basis. (Yaeckel decl. ¶15). A percentage fee of 35 % (thirty-five percent) was freely negotiated. (*Id.*) As part of the Agreement, Counsel was required to continue the prosecution of the matter regardless of the outcome of the preliminary motions (*i.e.*, class certification.) (*Id.*) Here, however, Plaintiff’s Counsel has agreed to a 33 & 1/3 % share of the recovery in order to maximize the recovery on behalf of the class. (*Id.*)

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

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

2 'A contingent fee must be higher than a fee for the same legal services paid as they
3 are performed. **The contingent fee compensates the lawyer not only for the legal
4 services he renders but for the loan of those services. The implicit interest rate
5 on such a loan is higher because the risk of default (the loss of the case, which
6 cancels the debt of the client to the lawyer) is much higher than that of
7 conventional loans.'** (Prosner, Economic Analysis of Law (4th ed.1992) pp. 534,
8 567.) **'A lawyer who both bears the risk of not being paid and provides legal
9 services is not receiving the fair market value of his work if he is paid only for
10 the second of these functions. If he is paid no more, competent counsel will be
11 reluctant to accept fee award cases.'** (Leubsdorf, The Contingency Factor in
12 Attorney Fee Awards (1981) 90 Yale L.J. 473, 480; see also Rules Prof. Conduct,
13 rule 4-200(B)(9) [recognizing the contingent nature of attorney representation is an
14 appropriate component in considering whether a fee is reasonable]; ABA Model
15 Code Prof. Responsibility, DR 2-106(B)(8) [same]; ABA Model Rules Prof.
16 Conduct, rule 1.5(a)(8). **[] Such fee enhancements are intended to compensate for
17 the risk of loss generally in contingency cases as a class.**

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

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

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

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

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

2. The Continuing Obligation to Devote Time and Effort to the Litigation

Since the tentative agreement, my office has had to devote considerable time to maintain the
litigation, achieve Court approval for the proposed settlement, and assist the proposed Class Members
with questions about the Class Notice, Potential Release and all available options. Moreover, based
on my experience acting as class counsel, I also estimate at least another 10 hours by my office will

1 be devoted assisting Class Members on questions and issues regarding the settlement, meeting with
2 Class Members (including on any late submissions), and preparing for and attending the Final
3 Approval hearing in this matter. (Yaeckel decl. ¶16).

4 **3. The Extent to which the Litigation Precluded Other Employment**

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

8 **4. The Experience, Reputation, and Ability of the Attorneys who Performed the**
9 **Services, and the Skill They Displayed in Litigation**

10 As set forth above, Plaintiff's counsel all have extensive experience, successfully prosecuting
11 class and representative actions. (Yaeckel decl. ¶3-5; Perez decl. ¶¶9-10). Fernandez's counsel are the
12 attorneys of record in a matter very recently (and favorably) decided before the California Supreme
13 Court titled *Donohue v. AMN Services, LLC*, (2021) 11 Cal.5th 58. The *Donohue* matter is a certified
14 class and PAGA action. (Yaeckel decl. ¶ 5). Plaintiff's counsel are currently lead counsel on
15 approximately 30 employment "wage and hour" claims with class action, or representative action
16 allegations. (Yaeckel decl. ¶6).

17 Plaintiff's counsel has recent (and successful) Trial experience in "Wage and Hour" cases. In
18 a recent successful PAGA trial, before the Hon. Katherine Bacal of the San Diego Superior Court,
19 Plaintiff's counsel was awarded their full requested attorneys fees and the hourly rates (which are
20 similar to the fees/rates billed here) billed were all approved. See *Carrington v. Starbucks Corp.* San
21 Diego Superior Court, Case No. 37-2014-00018637-CU-OE-CTL and published appellate opinion at
22 30 Cal.App.5th 504. (Yaeckel decl. ¶7).

23 Based on said experience, it is the opinion of counsel that this settlement represents a fair and
24 adequate payment. (Yaeckel decl. ¶¶8-9).

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

26 This is not a "coupon" class action case. (Yaeckel decl. ¶18). The Class is set to receive
27 significant monetary benefits they would not have received if Class Counsel did not act. (*Id.*)
28 Participating members of the Class will receive an average of **\$935.22** with some Class Members

1 receiving as much as **\$2,885.96**. (Bench decl. ¶ 17).

2 **6. A Percentage of the Common Fund Award is Proper**

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

4 Plaintiff's counsel submits that the request for 33 & 1/3 % in attorneys fees from the "common
5 fund" settlement is proper. *Laffitte v. Robert Half Intern. Inc.*, (2016) 1 Cal.5th 480, 503, 506.
6 Historically, courts have awarded fees as high as fifty percent (50%) of the common fund, depending
7 on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C.
8 1981) 526 F.Supp.494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million settlement
9 fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195
10 (awarding approximately 53% of the settlement fund as attorney fees).

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

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

24 **7. The Lodestar Cross-Check**

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

27 As set forth in the attached Declaration of Eric K. Yaeckel and Raul Perez, the actual lodestar
28

attorney's fees incurred (to date) are estimated to amount to be approximately **\$134,810.00** between all Plaintiff's counsel. (\$81,647.50 SYLG + \$53,162.50 Capstone Law APC).

Please Note: For a detailed breakdown of the tasks performed, rates of pay and hours expended please see the declaration of counsel. (Yaeckel decl. ¶19; Perez decl. ¶¶11-14).

Based on past experience, counsel estimates the associates will incur an additional 10 hours (at a minimum) hours in assisting Class Members on questions and issues regarding the settlement, meeting with Class Members (including those who file "late" submissions), and preparing for and attending the Final Approval hearing in this matter.

8. The Reasonableness of the Hourly Rates

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

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

The referenced "Laffey" chart states that for the time periods in this case, for an attorney with "20+" years experience, such as Mr. Sullivan, the matrix states a reasonable fee is between **\$1,227-\$997** per hour. Mr. Sullivan has over **31** years of experience and bills at **\$800** per hour. **Please Note:** While \$800 an hour may seem like a high figure at first glance, multiple Court's (including all San Diego Superior Court Judges) have accepted this figure for Mr. Sullivan. Moreover, this rate is justified given that "wage and hour" Class and/or Representative Action cases very rarely go to trial. Mr. Sullivan is one of the few attorneys who have (successfully) tried numerous of these types of cases. He has also successfully argued in front of the California Supreme Court in a Class and Representative action that is frequently cited in "wage and hour" litigation involving Meal Period claims. *Donohue*

1 *v. AMN Services, LLC*, (2021) 11 Cal.5th 58. (Yaeckel decl. ¶ 22).

2 For an attorney with **11-19** years experience, the matrix states a reasonable fee is between
3 **\$1,019- \$829** per hour. Mr. Yaeckel has over **14** years experience working on class action litigation
4 and only bill at the rate of **\$700** per hour. (Yaeckel decl. ¶ 23).

5 For an attorney with **1-3** years experience, the matrix states a reasonable fee is between **\$508**
6 **- \$437** per hour. The associate Mr. Archer, who was working on this matter has over a year of
7 experience and billed at the rate of **\$475** per hour. (Yaeckel decl. ¶ 24).

8 Moreover, the rates of co-counsel (Capstone Law APC), ranging between \$1,050 for the partner
9 and \$625-\$800 for senior counsel and associates, are all within the market range of hourly rates
10 charged by attorneys of comparable skill and experience working on similar matters. (Perez decl. ¶¶ 11-
11 14).

12 Accordingly, Plaintiff's Counsel's hourly rates are comparable to, or less than, those charged
13 by other class action plaintiffs' counsel and the firms defending class actions, and have been approved
14 by numerous federal and state courts.

15 **9. No Lodestar "Multiplier" is Necessary**

16 Bluntly, **no** multiplier is requested, or necessary, as the fees requested are **less** than the actual
17 fees incurred. Specifically, Plaintiff's Counsel has incurred approximately **\$134,810.00** in actual fees.
18 However, no multiplier is necessary as Plaintiff is only requesting **\$125,000.00** in fees.

19 Additionally, the settlement provides the class with a substantial monetary amount and the class
20 strongly supports the fairness of the settlement, even after being notified of the requested attorneys'
21 fee award (**1 opt-outs, and 0 objections**). In the event the Court deems a lodestar analysis is necessary
22 it will confirm that Plaintiff's fees are reasonable.

23 **10. The Amount of Costs**

24 Plaintiff's Counsel are also entitled to reimbursement of their litigation costs. Cal. Lab. Code
25 §§ 1194(a), 2699(g)(1).

26 Class Counsel has expended approximately **\$11,346.48** in costs, including filing fees, travel,
27 mediation, copying and document preparation charges, investigative fees, and delivery/service fees.
28

(Yaeckel decl. ¶28; Perez decl. ¶16). Defendant agreed not to oppose an amount of up to \$25,000.00 in costs. Accordingly, Plaintiffs' counsel therefore seeks approval of the actual costs of **\$11,346.48** (\$9,438.69 SYLG and \$1,907.79 to Capstone Law APC). (Yaeckel decl. ¶29).

C. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT IS REASONABLE

Plaintiff Fernandez requests an enhancement award of **\$10,000.00** for serving as the class representative. Defendant does not oppose this request. The Class was notified and does not object.

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

Plaintiff contributed extensive time and resources in the prosecution of this case. Plaintiff was able to provide information instrumental to the prosecution of this matter including identifying numerous witnesses that could corroborate his claims. Plaintiff also assisted with reviewing and providing insight on Defendant's documents produced. (See Fernandez decl. ¶¶3-6).

Moreover, by "sticking his neck out" as a Class Representative in a publicly filed lawsuit, Plaintiff took a substantial risk that may adversely impact his ability to work in this field in the future. Any company who does a detailed background check, will be able to determine that Plaintiff asserted legal claims against his former employer. An entire industry exists that allows employers to run extensive background searches on potential employees. Companies who provide these services specifically highlight the fact that their services allows employers to weed out litigious employment candidates. (Yaeckel decl. ¶¶ 31-33).

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

Plaintiff also risked personally owing a large cost award, into the tens of thousands of dollars, based on the costs incurred by Plaintiff, had the claims been unsuccessful. (Yaeckel decl. ¶ 34).

Despite all the risks, Plaintiff at all times remained committed to securing a monetary recovery

1 on behalf of the entire class. (See Fernandez decl. ¶¶7-9; Yaeckel decl. ¶ 35).

2 Accordingly, Plaintiff asks the Court to approve a class representative enhancement in the
3 amount of \$10,000.00 to Mr. Fernandez.

4 **D. COMPLIANCE HEARING**

5 Consistent with the Settlement Agreement, the Parties propose that the Compliance Hearing
6 be set for June 28, 2027, or a later date which will allow for all distributions to occur and for the check
7 cashing deadline for class members to expire.

8 **VI. CONCLUSION**

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

11
12 Dated: September 22, 2026

SULLIVAN & YAECKEL LAW GROUP, APC

13 *Cody Archer*

14 Eric K. Yaeckel

Cody D. Archer

15 Attorneys for Plaintiff GREGORY FERNANDEZ,
16 Individually, and on behalf of other members of the
17 general public similarly situated
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