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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

BEATRICE PARKER and JEFFREY
 GURULE, SR, on behalf of themselves, and all
 others similarly situated, and all aggrieved
 employees,

Plaintiff,

v.

CHERNE CONTRACTING CORPORATION;
 and DOES 1 through 10, inclusive,

Defendants.

) Case No: 4:18-cv-01912-HSG

) CLASS AND REPRESENTATIVE ACTION

) **PLAINTIFFS' NOTICE OF MOTION AND**

) **MOTION FOR AWARD OF ATTORNEYS'**

) **FEES AND COSTS, CLASS**

) **REPRESENTATIVE INCENTIVE**

) **PAYMENTS, GENERAL RELEASE**

) **PAYMENTS, AND SETTLEMENT**

) **ADMINISTRATION COSTS;**

) **MEMORANDUM OF POINTS AND**

) **AUTHORITIES IN SUPPORT THEREOF**

) Date: December 2, 2021

) Time: 2:00 p.m.

) Ctrm: 2

) Judge: Haywood S. Gilliam, Jr.

) Complaint Filed: February 13, 2018

) TAC filed: November 23, 2020

1 **PLEASE TAKE NOTICE THAT** on December 2, 2021 at 2:00 p.m., or as soon
 2 thereafter as the matter may be heard by the Honorable Haywood S. Gilliam, Jr., located at 1301
 3 Clay Street, Courtroom 2, 4th Floor, Oakland, California, Plaintiffs and Class Representatives
 4 Beatrice Parker and Jeffrey Gurule, Sr. will and hereby do move for an Order (1) (1) approving
 5 an award to Class Counsel of attorneys' fees in the amount of \$750,000 and actual costs incurred,
 6 which currently total \$39,383.59, (2) approving payment of the Class Representative Incentive
 7 Awards in the amount of \$5,000 to Plaintiff Parker and \$2,500 to Plaintiff Gurule, (3) approving
 8 the General Release Payments to Plaintiff Parker and Plaintiff Gurule in the amount of \$20,000
 9 each for the release of their individual claims that would otherwise need to be tried, and (4)
 10 approving payment of settlement administration costs to RG2 Claims Administration LLC in a
 11 final amount to be provided at final approval but not to exceed \$16,000.

12 This Motion is made pursuant to Federal Rule of Civil Procedure 23, which provides for
 13 court approval of the settlement of a class action. This Motion will be based on this notice of
 14 motion and motion, the accompanying memorandum of points and authorities, the parties' the
 15 Joint Stipulation of Class Action and PAGA Settlement and Release of Claims, the Declarations
 16 of Eric A. Grover, Scot Bernstein, Dana Boub, Beatrice Parker, and Jeffrey Gurule, Sr., the
 17 pleadings and papers filed in this case, and such evidence or oral argument as may be presented at
 18 the hearing.

19
 20 Dated: September 17, 2021

KELLER GROVER LLP

By:

/s/ *Eric A. Grover*

ERIC A. GROVER

ROBERT SPENCER

Attorneys for Plaintiffs and Certified Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court preliminarily approved the non-reversionary settlement of this putative class action and PAGA action on July 29, 2021.¹ Plaintiffs Beatrice Parker and Jeffrey Gurule, Sr. (“Plaintiffs” or “Class Representatives”) now move the Court for an award of reasonable attorneys’ fees and costs incurred during this litigation. Class Counsel achieved a class action settlement of California Labor Code violation claims and related settlement of representative PAGA claims with Defendant Cherne Contracting Corporation (“Cherne” or “Defendant”). Plaintiffs also seek an order approving the requested Class Representative Incentive Awards, the General Release Payments, and payment of the Settlement Administrator’s fees.

The settlement was achieved after three years of adversarial litigation and two mediations.² Through a formal mediation session with respected mediator the Honorable Jeffrey K. Winikow (Ret.) after class certification, the parties agreed to settle the entire action on the terms set forth in the Settlement Agreement, subject to approval by the Court.³

Plaintiffs seek an award to Class Counsel of attorneys’ fees in the amount of \$750,000, which is 30% of the common fund, and actual costs incurred in this litigation, which currently total \$39,383.59.⁴ Under California law,⁵ when the settlement produces a specific, identifiable

¹ Dkt. 97 (the Court’s July 29, 2021 Order granting preliminary approval, (“Preliminary Approval Order”). See Declaration of Eric A. Grover submitted in support of the motion for attorneys’ fees and costs (“Grover Decl.”), Ex. A (the Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“Settlement Agreement”). Hereinafter, all “Ex.” references are to the exhibits attached to the Grover Declaration unless otherwise stated.

² Grover Decl. at ¶¶ 6-12; Ex. A at § II.B.

³ Grover Decl. at ¶ 12; Ex. A at § II.B.

⁴ Grover Decl. at ¶¶ 41-63, Ex. F; see Ex. A at § III.L.4.a, § I.F. Class Counsel will file a supplemental declaration with the final approval motion updating hours worked and costs incurred. Grover Decl. at ¶ 53.

⁵ Federal courts may award reasonable attorneys’ fees and costs under Federal Rule of Civil Procedure (“Rule”) 23(h) and, in state law actions, also apply state law when determining appropriate attorneys’ fees. See e.g., *Morrison v. Am. Nat’l Red Cross*, No. 19-cv-02855-HSG, 2021 U.S. Dist. LEXIS 4043, at *18-19 (N.D. Cal. Jan. 8, 2021), citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Gonzalez v. S. Wine & Spirits of Am., Inc.*, 555 F. App’x 704, 704 (9th Cir. 2014) (finding district court abused its discretion by applying federal law over state law when calculating fee award in state action removed on diversity jurisdiction).

common fund for the benefit of the entire class, the court may award attorneys' fees using the percentage of the fund method.⁶ Class Counsel's requested award of attorneys' fees is reasonable and appropriate in light of the work that Class Counsel performed in the case, the contingent nature of this action, and the results achieved.⁷

A lodestar "cross-check" confirms the reasonableness of Plaintiffs' fee request as the fee request is less than Class Counsel's lodestar to date.⁸ Class Counsel's hourly rates are reasonable in light of their significant experience, skill, and expertise.⁹ Moreover, the rates are consistent with those of attorneys of similar qualifications practicing in the area of class actions and have been approved by courts in similarly settled cases.¹⁰ The number of hours expended by Class Counsel is also reasonable. Class counsel has provided detailed time records regarding their hours spent litigating this action and hourly rates.¹¹

Plaintiffs also request that the Court confirm Incentive Awards in the amount of \$5,000 for Plaintiff Parker and \$2,500 for Plaintiff Gurule.¹² Courts approve incentive awards to plaintiffs when justified and appropriate to compensate plaintiffs for time, effort, and inconvenience.¹³ The proposed enhancements are fair and reasonable.¹⁴

Plaintiffs also request that the Court approve Plaintiffs' \$20,000 General Release Payments.¹⁵ Following denial of class certification of the wage claims,¹⁶ Plaintiffs' individual

⁶ *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal. 5th 480, 503 (2016) clarifying that the percentage of the common fund is a proper method for awarding fees).

⁷ *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19 (2000); *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997); Grover Decl. at ¶¶ 6-13, 41-60.

⁸ Grover Decl. at ¶¶ 52-53.

⁹ *Id.* at ¶¶ 2-4, 44-49; Declaration of Scot D. Bernstein submitted in support of the fee motion ("Bernstein Decl."), at ¶ 1, Ex. 1.

¹⁰ Grover Decl. at ¶¶ 50-51.

¹¹ *Id.* at ¶¶ 42-49, Exs. B-E; Bernstein Decl. at ¶¶ 3-4, 9.

¹² See Ex. A at § III.L.3.a.

¹³ *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009); *Morrison*, 2021 U.S. Dist. LEXIS 4043, at *23-25. See also, e.g., *Clark v. Am. Residential Serv. LLC* (2009) 175 Cal.App.4th 785, 804 (internal quotations omitted), citing *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir.1998) and *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

¹⁴ Grover Decl. at ¶¶ 36-38.

¹⁵ Ex. A at §§ III.L.3 and II.C.

¹⁶ Dkt. 81 (Nov. 20, 2020 order denying in part, granting in part class certification motion).

1 wage claims would need to be tried if not settled. The Settlement Class Members are not subject
 2 to or affected by the General Release and therefore the General Release Payments are not
 3 preferential treatment.

4 Plaintiffs further request the Court approve the payment of fees of the Court-approved
 5 Settlement Administrator, RG2 Claims Administration LLC (“RG2 Claims” or “Settlement
 6 Administrator”) in an amount up to \$16,000, subject to detailed cost information being provided to
 7 the Court as part of the final approval motion.¹⁷

8 **II. PROCEDURAL HISTORY AND NOTICE PROCESS**

9 Plaintiffs set forth the factual and procedural history of this action in the preliminary
 10 approval motion filed on June 8, 2021¹⁸ and, for brevity and to avoid repetition, do not include it
 11 again here. Plaintiffs will file their motion for final approval of the class settlement on October
 12 28, 2021 pursuant to the Preliminary Approval Order and Scheduling Order.¹⁹

13 **A. Class Counsel’s work in this litigation.**

14 Class Counsel expended time and effort in investigating, researching, and preparing this
 15 case for litigation. Prior to bringing the action, Class Counsel investigated and researched
 16 Plaintiff Parker’s potential Labor Code claims, both in the individual context and as putative class
 17 claims and representative claims.²⁰ Class Counsel drafted and filed the initial complaint and
 18 PAGA exhaustion letter.²¹

19 Once the litigation was underway, the parties conducted significant discovery.²² Class
 20 Counsel propounded multiple sets of written discovery, reviewed more than 1,600 pages of
 21 documents that Defendant produced and assisted Plaintiff Parker in her responses to Defendant’s
 22 written discovery. Class Counsel took 11 depositions and defended five, including the
 23

24 ¹⁷ See Declaration of Dana Boub of Behalf of RG2 Claims Administration LLC Regarding Notice
 25 to the Class, (“RG2 Claims Decl.”) at ¶ 12; *see also*, Ex. A at § III.L.6. RG2 Claims will file a
 supplement declaration with the final approval motion.

26 ¹⁸ Dkt. 93.

27 ¹⁹ Dkts. 97 and 101.

28 ²⁰ Grover Decl. at ¶ 6 Bernstein Decl. at ¶ 4.

²¹ Grover Decl. at ¶ 6; Bernstein Decl. at ¶ 4.

²² Grover Decl. at ¶ 7.

depositions of both Plaintiffs.²³

The litigation has involved substantive motion practice. Class Counsel opposed Defendant's motion to dismiss and later its motion for summary judgment.²⁴ Class Counsel moved for class certification.²⁵ Class Counsel moved to amend the operative complaint as needed throughout the litigation and prepared and filed First, Second and Third Amended Complaints.²⁶ Class Counsel attended all of the hearings in this action.²⁷

The Parties first attempted mediation in May 2019. Prior to that mediation session, Class Counsel engaged in discussions with Defendant's counsel regarding potential settlement. Prior to the formal mediation session, Class Counsel drafted and sent a detailed mediation information request to Defense Counsel.²⁸ In response, Defendant provided relevant information and documents, which Class Counsel reviewed and analyzed in advance of the litigation. Class Counsel participated in the initial mediation session.²⁹ The parties were unable to reach a settlement and the litigation continued.³⁰

Following the November 2020 Class Certification Order, Class Counsel and Defense Counsel revisited the potential for settlement and the parties agreed to try mediation again. Prior to the second mediation, Class Counsel drafted and sent a second detailed mediation information request to Defense Counsel.³¹ Defendant provided the relevant information and documents that Class Counsel requested.³²

Using the information provided in response to the second mediation information request, along with the information obtained through discovery and various motion papers, Class Counsel had the following significant, relevant information in advance of the second mediation:

²³ Grover Decl. at ¶ 7.

²⁴ Grover Decl. at ¶ 8; Bernstein Decl. at ¶ 4.

²⁵ Grover Decl. at ¶ 8; Bernstein Decl. at ¶ 4.

²⁶ Grover Decl. at ¶ 8; Bernstein Decl. at ¶ 4.

²⁷ Grover Decl. at ¶ 8.

²⁸ Grover Decl. at ¶ 9; Bernstein Decl. at ¶ 4.

²⁹ Grover Decl. at ¶ 9; Bernstein Decl. at ¶ 4.

³⁰ Grover Decl. at ¶ 9.

³¹ Grover Decl. at ¶ 10; Bernstein Decl. at ¶ 4.

³² Grover Decl. at ¶ 10; Bernstein Decl. at ¶ 4.

(A) The number of Class Members:

- There are approximately 1,891 total unique Class Members. The Class Period is period from December 18, 2016 through June 6, 2019, inclusive.
- All of the Class Members also fall within the definition of an Aggrieved Employee.

(B) The number of Qualified Paper Paychecks:

- There are an estimated 28,343 total “Qualified Paper Paychecks,” *i.e.*, the number of times during the Class Period when Defendant’s records demonstrate that a Class Member received a paper paycheck.

(C) The number of Aggrieved Employees:

- There are 2,211 Aggrieved Employees, *i.e.* all current and former hourly employees who worked for Defendant in California at any time during the PAGA Period. The PAGA Period is the period from December 18, 2016 through February 22, 2021, inclusive.
- Approximately 320 Aggrieved Employees are not also Class Members.

(D) The number of Qualified Pay Periods:

- There are an estimated 81,801 total “Qualified Pay Periods,” *i.e.*, the total number of pay period (as reflected in Defendant’s records) in which Aggrieved Employees performed work for Defendant during the PAGA Period.³³

The parties participated in a lengthy mediation session on February 22, 2021 with the Honorable Jeffrey K. Winikow (Ret.), a well-respected mediator with experience mediating wage and hour class actions.³⁴ At the mediation, Class Counsel engaged in arm’s-length negotiations with Defense Counsel and the parties were able to reach a tentative settlement.³⁵

Following the mediation, Class Counsel drafted a detailed, formalized settlement agreement and exhibits and negotiated the language and terms with Defense Counsel until the

³³ Grover Decl. at ¶ 11.

³⁴ Ex. A at § II.B; Grover Decl. at ¶ 12; Bernstein Decl. at ¶ 4.

³⁵ Grover Decl. at ¶ 12; Bernstein Decl. at ¶ 4.

1 Settlement Agreement, setting forth all of the settlement terms, and its exhibits were finalized and
2 executed.³⁶

3 On June 8, 2021, Plaintiffs moved for preliminary approval of the settlement.³⁷ Class
4 Counsel drafted and filed the motion for preliminary approval of the proposed class action and
5 representative PAGA settlement and supporting papers.³⁸ The Court granted preliminary
6 approval of the Settlement Agreement on July 29, 2021.³⁹

7 After the entry of the Preliminary Approval Order, Class Counsel have spent time
8 speaking with Class Members and interacting with Defense Counsel and the Settlement
9 Administrator on notice and settlement administration issues. Class Counsel will spend
10 additional time working with Defense Counsel, the Settlement Administrator, speaking with Class
11 Members, finalizing this motion, preparing and filing the final approval motion, and preparing for
12 and attending the final fairness hearing.⁴⁰

13 **B. Status of the notice process and Class Members' response after preliminary**
14 **approval.**

15 Pursuant to the Court's Preliminary Approval Order, the Settlement Class Members are
16 "all Class Members who do not submit a valid Request for Exclusion,"⁴¹ and "Class Members" is
17 defined as:

18 All current and former hourly employees who worked for Defendant in
19 California and received one or more paper paychecks during the Class
20 Period.⁴²

21 The Class Period is December 18, 2016 through June 6, 2019, inclusive.⁴³ For the PAGA
22 claims, the Settlement defines "Aggrieved Employees" to mean "all current and former hourly
23

24 ³⁶ Grover Decl. at ¶ 12; Bernstein Decl. at ¶ 4. *See generally*, Ex. A.

25 ³⁷ Grover Decl. at ¶ 13.

26 ³⁸ Grover Decl. at ¶ 13.

27 ³⁹ Dkt. 97; Grover Decl. at ¶ 14.

28 ⁴⁰ Grover Decl. at ¶ 15.

⁴¹ Ex. A at § I.R.R.

⁴² Dkt. 97 at 3; Ex. A at § I.H.

⁴³ Dkt. 97 at 3.

employees who worked for Defendant in California at any time during the PAGA Period.”⁴⁴ The PAGA Period is from December 18, 2016 through February 22, 2021, inclusive.⁴⁵

From its records, Defendant identified 1,891 Class Members, who all are also Aggrieved Employees. There are an additional 320 Aggrieved Employees who are not Class Members for a total of 2,211 Aggrieved Employees.⁴⁶ Defendant provided the necessary relevant information about the Class Members and Aggrieved Employees to the Settlement Administrator.⁴⁷ Pursuant to the Preliminary Approval Order and Settlement Agreement, on September 2, 2021, the Court-approved Settlement Administrator, RG2 Claims, mailed the Court-approved Class Notices via U.S. mail to the 1,891 Class Members.⁴⁸

To date, zero Class Notices have been returned by the Post Office as undeliverable.⁴⁹ RG2 Claims will submit a supplemental declaration with the motion for final approval updating the Court on the final delivery success rate of the Class Notices.⁵⁰

Class Members do not have to file a claim to participate in the settlement.⁵¹ All Class Members have 45 days from September 2, 2021, the date that RG2 Claims initially mailed the Class Notice, to opt out of or object to the settlement.⁵² The deadline to opt out or object is October 18, 2021.⁵³ As of the filing of this motion, RG2 Claims has received no opt outs from Class Members or objections.⁵⁴ Class Counsel also has not received any opt outs or objections, nor received notice that any objections have been submitted to the Court.⁵⁵

The Class Notice provided Class Members with information on how to dispute the

⁴⁴ Ex. A at § I.B.

⁴⁵ Ex. A at § I.BB

⁴⁶ RG2 Claims Decl. at ¶ 4; Grover Decl. at ¶¶ 11.

⁴⁷ RG2 Claims Decl. at ¶ 4.

⁴⁸ RG2 Claims Decl. at ¶¶ 5-7, Ex. A; *see also*, Dkt. 97; Grover Decl, Ex. A at §§ III.K.1, III.K.3.

⁴⁹ RG2 Claims Decl. at ¶ 8.

⁵⁰ RG2 Claims Decl. at ¶ 12; Grover Decl. at ¶ 20.

⁵¹ Ex. A at § L.II.a.

⁵² RG2 Claims Decl. ¶¶ 9-10, Ex. A; Grover Decl. at ¶ 24; Ex. A at §§ III.K.7 and III.K.8.

⁵³ RG2 Claims Decl. at ¶¶ 10-11; Grover Decl. at ¶ 24.

⁵⁴ RG2 Claims Decl. at ¶¶ 10-11.

⁵⁵ Grover Decl. at ¶ 25.

1 paycheck data used to calculate individual settlement payments.⁵⁶ As of the date of this
 2 declaration, RG2 Claims has not received any disputes from Class Members.⁵⁷

3 On September 1, 2021, RG2 Claims sent out the required CAFA notices.⁵⁸

4 **III. THE SETTLEMENT TERMS**

5 The Settlement provides that Defendant will fund the MSA in the amount of \$2,500,000
 6 to resolve the claims covered by the Settlement.⁵⁹ After subtracting out the amounts allocated to
 7 the PAGA Payment (\$500,000), Class Counsel's fees and costs (fees not to exceed \$750,000 plus
 8 actual out-of-pocket costs, which are currently estimated not to exceed \$40,000), the General
 9 Release Payments (not to exceed \$40,000), the Class Representative Incentive Awards (not to
 10 exceed \$7,500), and the settlement administration costs (not to exceed \$16,000), the remaining
 11 funds, referred to as the Net Settlement Amount, will distributed in full to the Settlement Class
 12 Members.⁶⁰ The Net Settlement Amount is estimated to be \$1,146,500.⁶¹ Defendant does not
 13 have any revisionary interest in the MSA.⁶²

14 Settlement also provides that \$500,000 of the MSA will be allocated to the settlement of
 15 the PAGA claims. Of that amount, the Settlement provides that 75%, or \$375,000, will be paid to
 16 the LWDA for enforcement of labor laws and education of employers and employees about their
 17 rights and responsibilities under the Labor Code and 25% – or \$125,000 – will be allocated to the
 18 Aggrieved Employees. All Class Members are Aggrieved Employees and will receive an
 19 Individual PAGA Payment.⁶³

20 **A. Payments to Settlement Class Members.**

21 To determine the Individual Settlement Payments, the Settlement Agreement provides that
 22 the Settlement Administrator will use the Class Data that Defendant will provide and will
 23

24 ⁵⁶ RG2 Claims Decl. at ¶ 9, Ex. A.

25 ⁵⁷ RG2 Claims Decl. at ¶ 9.

26 ⁵⁸ Dkt. 102 (Declaration of Arthur J. Rooney re: CAFA Notice Mailing).

27 ⁵⁹ Ex. A at §§ I.W, III.A.

28 ⁶⁰ Ex. A at §§ I.X and III.L.2, *see*, §§ I.F, I.J., I.R, I.AA, III.C, III.L.3-L.6; Grover Decl. at ¶ 28.

⁶¹ Grover Decl. at ¶ 28; *see* Ex. A at § I.X.

⁶² Ex. A at § III.L.

⁶³ Grover Decl. at ¶ 29.

1 calculate the total Qualified Paper Paychecks for all Settlement Class Members.⁶⁴ The respective
 2 Qualified Paper Paychecks for each Settlement Class Member will be divided by the total
 3 Qualified Paper Paychecks for all Settlement Class Members, resulting in the Payment Ratio --
 4 Class Member for each Settlement Class Member.⁶⁵ Each Settlement Class Member's Payment
 5 Ratio will then be multiplied by the Net Settlement Amount to calculate each Settlement Class
 6 Member's share of the Net Settlement Amount.⁶⁶

7 If no Class Members opt out by the Response Deadline, the average estimated Individual
 8 Settlement Payment for each Settlement Class Member will be \$606.29 (\$1,146,500/1,891).⁶⁷
 9 Information on the highest estimated settlement payment will be provided in the RG2
 10 Supplemental Declaration.⁶⁸

11 **B. Payments to the Aggrieved Employees.**

12 The Settlement Agreement provides that the portion of the PAGA Payment allocated to
 13 Aggrieved Employees will be distributed in Individual PAGA Payments to each Aggrieved
 14 Employee.⁶⁹ Using the Aggrieved Employee Data that Defendant will provide, the Settlement
 15 Administrator will calculate the total Qualified Pay Periods for all Aggrieved Employees. The
 16 respective Qualified Pay Periods for each Aggrieved Employees will be divided by the total
 17 Qualified Pay Periods for all Aggrieved Employees, resulting in the Payment Ratio – Aggrieved
 18 Employees for each Aggrieved Employee. Each Aggrieved Employee's Payment Ratio will then
 19 be multiplied by the \$125,000 portion of the PAGA Payment allocated for distribution to the
 20 Aggrieved Employees to calculate each Aggrieved Employee's Individual PAGA Payment.⁷⁰

21 Settlement Class Members who also are Aggrieved Employees will receive the Individual
 22 PAGA Payment in addition to Individual Settlement Payments. In addition to their Individual

23 ⁶⁴ Ex. A at § III.L.2.a.1.

24 ⁶⁵ Ex. A at § III.L.2.a.1; *see also*, §§ I.O, I.DD, I.EE, I.MM. Qualified Paper Paychecks are
 25 defined as any paper paycheck that a Class Member received at any time during the Class Period.
 26 Ex. A at § I.EE

26 ⁶⁶ Ex. A at § III.L.2.a.1; Grover Decl. at ¶ 31.

26 ⁶⁷ Grover Decl. at ¶ 32.

27 ⁶⁸ Grover Decl. at ¶ 32.

27 ⁶⁹ Ex. A at § III.L.2.b.

28 ⁷⁰ Ex. A at § III.L.2.b; *see also*, §§ I.S., I.T, I.AA, III.L.5.

Settlement Payment, each Settlement Class Member will receive a pro rata share of the Aggrieved Employees' \$125,000 portion of the PAGA Payment. There also are an additional 320 Aggrieved Employees who are not Settlement Class Members and who will receive Individual PAGA Payments. The average Individual PAGA Payment is estimated at \$56.54 (\$125,000/2,211).⁷¹

C. Limited Release applicable to Settlement Class Members.

The Settlement Agreement provides a Limited Release applicable to the Settlement Class Members.⁷² Through the Limited Release, Plaintiffs and Settlement Class Members will release only the claims in the operative Third Amended Complaint under Labor Code § 226 based on the failure to provide compliant wage statements, together with interest, fees, and costs related to that failure.⁷³ The Released Claims are defined in the Settlement Agreement § IMM.⁷⁴

D. The PAGA Release

The Settlement provides a separate PAGA Release through which Plaintiff Parker, individually and as representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, releases the Released Parties of and from any and all claims for civil penalties, attorneys' fees, and litigations costs under PAGA (the "PAGA Released Claims").⁷⁵ No individual Class Members or Aggrieved Employees are providing a PAGA Release.

E. The General Releases by Plaintiffs.

In addition to the certified Labor Code § 226 claim, Plaintiffs Parker and Gurule have individual wage claims that remain part of the action.⁷⁶ In exchange for a payment of \$20,000 to each, Plaintiffs Parker and Gurule will provide a General Release of their claims against the Released Parties.⁷⁷ The General Release Payments are in addition to each Plaintiff's Class

⁷¹ Grover Decl. at ¶ 29; *see* RG2 Claims Decl. at ¶ 4.

⁷² Ex. A at §§ III.B, *see also*, §§ IMM, INN.

⁷³ Ex. A at § III.B; *see also*, § IMM, Dkt. 82.

⁷⁴ Ex. A at § IMM, *see also*, § INN, III.B.

⁷⁵ Ex. A at § III.D, *see also*, §§ ICC, INN.

⁷⁶ Ex. A at § III.C; Grover Decl. at ¶ 40.

⁷⁷ Ex. A at § III.C; Grover Decl. at ¶ 40.

1 Representative Incentive Award, Individual Settlement Payment, and Individual PAGA
2 Payment.⁷⁸ The General Release Payments are discussed further in Section IV.F below.

3 **F. Class Representative Incentive Awards.**

4 The Settlement Agreement provides reasonable incentive payments to the Class
5 Representatives to compensate them for the risks, time, and effort they expended in coming
6 forward to provide invaluable information in support of the claims alleged in the complaint.⁷⁹
7 Subject to the Court's approval, the Settlement Agreement provides that Plaintiff Parker will
8 receive a \$5,000 enhancement payment and Plaintiff Gurule will receive \$2,500 enhancement
9 payment for serving as class representatives.⁸⁰ The Incentive Awards are discussed further in
10 Section IV.E below.

11 **G. Settlement Administration Costs.**

12 The Settlement Agreement provides that RG2 Claims may be paid fees of up to \$16,000.⁸¹
13 RG2 Claims has performed and will continue to perform tasks necessary to the administration of
14 the settlement, including providing notice to the Class Members, receiving requests for exclusion
15 and objections, processing all returned mail, calculating individual settlement payments, handling
16 inquiries from Class Members, and issuing and mailing settlement payments.⁸² RG2 Claims will
17 provide a supplemental declaration detailing its work as part of the final approval motion.

18 **H. The Settlement Agreement and Notice clearly state the attorneys' fees and**
19 **costs.**

20 Class Counsel is requesting attorneys' fees in the amount of \$750,000.00, which is 30% of
21 the amount Defendant will pay to fund the settlement, plus Class Counsel's actual out-of-pocket
22 costs incurred litigating this action.⁸³ The requested fee amount -- which is less than Class
23 Counsel's current lodestar -- is intended to compensate Class Counsel for the benefits achieved
24

25 ⁷⁸ Ex. A at § III.C, III.L.3.e; *see also*, § I.R.

26 ⁷⁹ Ex. A at § III.L.3.a.

27 ⁸⁰ Ex. A at § III.L.3.a; Grover Decl. at ¶¶ 36-38.

28 ⁸¹ Ex. A at § III.L.6.

⁸² *See generally*, RG2 Claims Declaration.

⁸³ Grover Decl. at ¶¶ 41-63; *see* Ex. A at § III.L.4.

for the Class, the efficient and fair resolution of the Class claims, the risk of taking on a complex class action on a contingency basis, the preclusion of accepting other work, plus all of the work that Class Counsel already performed in litigating this action and will perform in documenting the settlement, securing approval of the settlement, making sure that the settlement is fairly administered and implemented, and obtaining dismissal of the action.

IV. ARGUMENT

A. Class Counsel requests an award under the common benefit doctrine.

1. A fee award of 30% is reasonable here.

Class Counsel respectfully requests that this Court approve the requested attorneys' fees in this action. This application is made pursuant to Federal Rule 23(h),⁸⁴ which requires court approval of fees paid through settlement of a class action. When a state law action is removed on diversity jurisdiction grounds, state law governs the calculation of attorneys' fees.⁸⁵

Under California law, the "percentage of fund method" is a proper method for calculating fees in class actions.⁸⁶ Class Counsel seeks attorneys' fees of 30% of the amount Defendant will pay to fund the settlement. The California Supreme Court recently clarified that the percentage of the common fund is a proper and accepted method for awarding fees.⁸⁷ Indeed, courts have long recognized the "common fund" or "common benefit" doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund.⁸⁸ In *Laffitte*, the California Supreme Court held 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

⁸⁴ See also Rule 23(e)(2)(C)(iii).

⁸⁵ *Morrison*, 2021 U.S. Dist. LEXIS 4043, at *18-19, citing *Vizcaino*, 290 F.3d at 1047. Courts applying California law still may look to federal authority for guidance in awarding attorneys' fees. *Id.*, citing *Apple Computer, Inc. v. Superior Court*, 126 Cal. App. 4th 1253, 1264 n.4 (2005).

⁸⁶ *Laffitte*, 1 Cal. 5th at 506; *Morrison*, 2021 U.S. Dist. LEXIS 4043, at *18-19, citing same.

⁸⁷ *Laffitte*, 1 Cal. 5th at 503.

⁸⁸ *Id.*; see also, *Serrano v. Priest* ("Serrano IIF") 20 Cal.3d 25, 34 (1977); *Glendale City Employees' Assoc. v. City of Glendale*, 15 Cal.3d 328, 341, fn.19 (1975); *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-392 (1970).

1 of a reasonable fee by choosing an appropriate percentage of the fund created.”⁸⁹

2 Numerous California state appellate courts have found similarly.⁹⁰ Moreover, at least
3 eight federal courts of appeal—the First, Third, Sixth, Seventh, Ninth, Tenth, Eleventh and the
4 D.C. Circuit—have endorsed the “percentage fee” method for determining reasonable attorneys’
5 fees in common benefit cases.⁹¹ The Ninth Circuit has explained that “attorneys for a successful
6 class may recover a fee based on the entire common fund created for the class, even if some class
7 members make no claims against the fund so that money remains in it that otherwise would be
8 returned to the defendants.”⁹² Courts may even look at the total fund value in a reversionary
9 settlement, although that is not necessary in this “all-in” (*i.e.*, non-reversionary) settlement.⁹³

10 Although the Ninth Circuit’s general benchmark is 25%, “California district courts usually
11 award attorneys’ fees in the range of 30-40% in wage and hour class actions that result in the
12 recovery of a common fund under \$10 million.”⁹⁴

13 ⁸⁹ *Laffitte*, 1 Cal. 5th at 503 (providing an extended analysis of California law regarding fee award
14 methodology).

15 ⁹⁰ *See e.g., Knoff v. City and County of San Francisco*, 1 Cal.App.3d 184, 203-204 (1969) (court
16 upheld a “contingent percentage” award of attorneys’ fees in a representative action as the proper
17 exercise of the court’s broad equitable powers); *Rider v. County of San Diego*, 11 Cal.App.4th
18 1410, 1423 (1992) (attorneys’ fees and expenses properly awarded from common benefit
19 composed of illegally imposed sales and use tax); *Bank of America v. Cory*, 164 Cal.App.3d 66,
89-92 (1985) (fees awarded from common benefit created by action compelling state to claim
dormant bank accounts); *Parker v. Los Angeles*, 44 Cal.App.3d 556, 567-68 (1974) (court upheld
fee award equal to one-third of the damages in an inverse condemnation action).

20 ⁹¹ *See, e.g., Vizcaino*, 290 F.3d at 1047; *Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods.*
21 *Liab. Litig.)*, 654 F.3d 935, 942 (9th Cir. 2011); *see also, Laffitte*, 1 Cal. 5th at 503 (“We join the
22 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, ... the court may determine the
amount of a reasonable fee by choosing an appropriate percentage of the fund created.”); *In re*
Sumitomo Copper Litig., 74 F. Supp. 2d 393, 396-398 (S.D.N.Y. 1999) (similar).

23 ⁹² *Williams*, 129 F.3d at 1027. *See also, Boeing*, 444 U.S. at 478 (“a lawyer who recovers a
24 common fund for the benefit of persons other than himself or his client is entitled to a reasonable
attorney’s fee from the fund as a whole.”).

25 ⁹³ *Staton*, 327 F.3d at 967 (quoting *Boeing v. Van Gemert*); *Williams*, 129 F.3d at 1027 (finding
26 district court abused its discretion by awarding class counsel’s fees based on percentage of claims
made rather than the total common fund); *Stern v. Gambello* 480 Fed. App’x 867, 870 (9th Cir.
27 2012) (finding district court correctly considered the requested fees against the potential recovery,
not the claims actually made); *see Ex. A at § III.L.b.3.*

28 ⁹⁴ *Rivas v. BG Retail, LLC*, No. 16-cv-06458-BLF, 2020 U.S. Dist. LEXIS 8712, at *23 (N.D. Cal.
Jan. 16, 2020); *see also, e.g., Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 260 (N.D. Cal.

(*Cont’d*)

1 The Settlement Agreement provides a fixed common fund from which reasonable
 2 attorneys' fees can be recovered. The common fund will substantially benefit all Settlement
 3 Class Members, *i.e.*, all Class Members who do not opt out. Each Settlement Class Member will
 4 receive an ascertainable settlement payment. Thus, the common fund doctrine enables the Court
 5 to determine a reasonable fee with "some exactitude."⁹⁵

6 Accordingly, Class Counsel's fee request of 30% of the amount Defendant will pay to
 7 fund the settlement value, is fair and reasonable and is within the range of awards in California
 8 and the Ninth Circuit. It is also reasonable given Class Counsel's actual lodestar to date of
 9 \$1,115,745,⁹⁶ the history of this action, and the results obtained by Class Counsel.

10 **2. The circumstances of this case support the requested fee award.**

11 Given the results achieved under the circumstances of this litigation, a fee award of 30%
 12 is reasonable. As encapsulated in *Sumitomo Copper Litigation*:⁹⁷

13
 14 No one expects a lawyer whose compensation is contingent on the success
 15 of his services to charge, when successful, as little as he would charge a
 16 client who in advance of the litigation has agreed to pay for his services,
 17 regardless of success. Nor, particularly in complicated cases producing
 large recoveries, is it just to make a fee depend solely on the reasonable
 amount of time expended.

18 In that vein, this Court should consider the contingency nature of this case, the uncertainty
 19 of the outcome, the quality of the counsel, and the preclusion from other employment.⁹⁸

20
 21
 22 2015) (District courts in the Ninth Circuit "have consistently approved of attorney fee awards over
 23 the 25% benchmark, specifically at a rate of 30% or higher.") (internal quotations and original
 24 alternations omitted); *Morrison*, 2021 U.S. Dist. LEXIS 4043, at *24, citing *Vizcaino*, 290 F.3d at
 1047 (noting that the "usual range" of fee awards is 20-30%); *Izor v. Abacus Data Sys.*, No. 19-cv-
 01057-HSG, 2020 U.S. Dist. LEXIS 239999, at *24 (N.D. Cal. Dec. 21, 2020) (similar).

25 ⁹⁵ *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989).

26 ⁹⁶ Class Counsel's lodestar is discussed in Section IV.B below. See Grover Decl. at ¶¶ 52-53.

27 ⁹⁷ *Sumitomo Copper Litig.*, 74 F. Supp. 2d at 396; see also, *e.g.*, *Schiller v. David's Bridal, Inc.*,
 No. 1:10-cv-00616-AWI-SKO, 2012 U.S. Dist. LEXIS 80776, at *54 (E.D. Cal. June 11, 2012),
 quoting same.

28 ⁹⁸ See Grover Decl. at ¶¶ 41, 54-56.

a) **The contingent nature of this case.**

Class Counsel provided experienced, competent representation and obtained a substantive settlement for the Class Members while prosecuting the case on a contingency basis. As the California Supreme Court has explained:

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.⁹⁹

From the outset of the case to the present, prosecution of this action has involved substantial financial risk for Class Counsel. Class Counsel undertook this matter on a purely contingent basis, with no assurance of recovery.¹⁰⁰ In addition to their time, Class Counsel placed at risk their own resources to prosecute this action with no guarantee of success. If litigation of the certified claim continued to trial, Plaintiffs would face potential legal and factual hurdles that could have prevented the Class from obtaining any recovery.¹⁰¹ Defendant has argued, for example, that no Class Member suffered any damages related to the issuance of wage statements and the Plaintiffs will be unable to prove that any Labor Code § 226(a) violation was a “knowing and intentional failure,” a necessary element for the award of statutory damages under Labor Code § 226(e).¹⁰²

⁹⁹ *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-1133 (2001) (internal citation, quotations omitted).

¹⁰⁰ Grover Decl. at ¶¶ 54-56; Bernstein Decl. at ¶¶ 3-5.

¹⁰¹ Grover Decl. at ¶¶ 55-56.

¹⁰² Grover Decl. at ¶ 55. *See e.g., Mays v. Wal-Mart Stores, Inc.*, 804 F. App’x 641, 644 (9th Cir. 2020) (reversing class certification of a wage statement class after concluding that the class representative’s receipt of a pay stub with only a minor discrepancy in the employer’s name was not the type of injury-in-fact required for Article III standing, meaning she could not represent the class); *Roadrunner Intermodal Servs., Ltd. Liab. Co. v. T.G.S. Transp., Inc.*, No. 1:17-cv-01207-DAD-BAM, 2019 U.S. Dist. LEXIS 142321, at *50 (E.D. Cal. Aug. 21, 2019) (finding employer was not liable under Lab. Code § 226(e) as its pay stub error was unintentional).

Plaintiffs also faced risks related to the PAGA claim and penalties. Defendant has raised what it considers to be substantial defenses to Plaintiffs' PAGA claims. Defendant has argued that the PAGA claims could not succeed because it asserts that they are wholly derivative of the other claims that are unsuitable for class treatment.¹⁰³ Even if Plaintiffs succeed in proving their PAGA claims, there would remain the risk that the Court could exercise its broad discretion under PAGA to award lesser penalties than might otherwise be owed.¹⁰⁴ In other words, Aggrieved Employees could receive significantly less than \$100 per pay period if this action proceeds to trial, instead of settling now.¹⁰⁵

Further, even if Plaintiffs succeeded at trial, there still was no guarantee of success in any subsequent appeals.¹⁰⁶ Despite such challenges, Class Counsel were able to persuade Defendant that it faced sufficient exposure such that it was willing to settle Plaintiffs' claims.

b) The experience, reputation, and ability of counsel, and the skill they displayed in litigation.

Class Counsel has substantial experience in complex class action litigation, including employment class actions.¹⁰⁷ Because of their experience and skill, Class Counsel were able to develop a thorough factual record regarding Defendant's wage statement policies and practices. Class Counsel persuaded Defendant that settlement was a better option than the costs and risks of

¹⁰³ See e.g., *Weigle v. FedEx Ground Package Sys., Inc.*, 267 F.R.D. 614, 623 (S.D. Cal. 2010); *Pryor v. Aerotek Scientific, LLC*, 278 F.R.D. 516, 537 (C.D. Cal. 2011). See also, cases in which the court struck PAGA claims based on manageability problems, e.g., *Salazar v. McDonald's Corp.*, No. 14-cv-02096-RS, U.S. Dist. LEXIS 9641, at *8 (N.D. Cal. Jan. 5, 2017); *Ortiz v. CVS Caremark Corp.*, No. C -12-05859 EDL, 2014 U.S. Dist. LEXIS 36833, at *11 (N.D. Cal. Mar. 18, 2014); *Brown v. Am. Airlines, Inc.*, No. CV 10-8431-AG (PJWx), 2015 U.S. Dist. LEXIS 150672 (C.D. Cal. Oct. 5, 2015).

¹⁰⁴ Lab. Code § 2699(e)(2). See e.g., *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d 1058, 1100, 1104 (N.D. Cal. 2019) (finding that, under Labor Code § 2699(e)(2), "the Court has broad discretion to award PAGA penalties as the Court sees fit" and reducing the PAGA penalty award significantly from the maximum penalties possible).

¹⁰⁵ See e.g., *Magadia*, 384 F. Supp. 3d at 1100, 1104. See also, Dkt. 93-1, Preliminary Approval Grover Decl. at ¶ 26, for list of additional exemplar cases where courts awarded substantially reduced PAGA penalties.

¹⁰⁶ Grover Decl. at ¶ 55.

¹⁰⁷ Grover Decl. at ¶¶ 2-4, 26-49, 57; Bernstein Decl. at ¶ 2, Ex. 1.

1 continued and prolonged litigation and obtained a settlement providing an excellent result for the
2 Class Members.

3 **c) The results achieved.**

4 The results of the settlement support Class Counsel's request for attorneys' fees. Class
5 Counsel achieved an exceptional result in this case, under all the circumstances. The Parties
6 reached a non-collusive, arm's-length settlement, with the assistance of a respected mediator,
7 after formal discovery and contested litigation.¹⁰⁸

8 Although the response period is still open, the absence of objections to the settlement in
9 general or to Class Counsel's request for fees, thus far indicates Class Members' support for the
10 results achieved by Class Counsel.¹⁰⁹ Class Counsel's prosecution of this action resulted in
11 tangible benefits for the Settlement Class Members.

12 The settlement is a good compromise for the damages of absent Settlement Class
13 Members. Including the expected costs of notice and administration (\$16,000), the amounts
14 requested for Class Counsels' fees and costs (approximately \$790,000), the Class Representative
15 Incentive Awards (\$7,500), the General Release Payments (\$40,000), the LWDA's portion of the
16 PAGA settlement (\$375,000), and the remaining portion of the PAGA Payment allocated to
17 Settlement Class Members (\$125,000), Defendant will pay \$2,500,000 to resolve the claims
18 covered by the settlement.¹¹⁰

19 If no Class Members opts out, the estimated \$1,146,500 Net Settlement Amount will be
20 divided by 1,891 Settlement Class Members.¹¹¹ The Settlement Agreement provides that each
21 Settlement Class Member will receive an Individual Settlement Payment based on the number of
22 Qualified Paper Paychecks that he or she received during the Class Period.¹¹² Each Individual
23 Settlement Payment is estimated to be, on average, \$606.29.¹¹³

24
25 ¹⁰⁸ Grover Decl. at ¶ 12.

26 ¹⁰⁹ RG2 Claims Decl. at ¶ 11, Ex. A; Grover Decl. at ¶ 25.

27 ¹¹⁰ Ex. A at §§ III.A, III.L, I.W, I.X; Grover Decl. at ¶ 28.

28 ¹¹¹ Ex. A at §§ I.X, III.L.2.a; Grover Decl. at ¶ 32.

¹¹² Ex. A at § III.L.2.a(1), *see also*, §§ I.T, I.II, I.JJ.

¹¹³ Grover Decl. at ¶ 32.

From the \$125,000 of the PAGA Payment allocated to Aggrieved Employees, each Aggrieved Employee will receive an Individual PAGA Payment based the number of Qualified Pay Periods worked during the PAGA Period.¹¹⁴ All Settlement Class Members are Aggrieved Employees and will receive an Individual PAGA Payment in addition to the Individual Settlement Payment.¹¹⁵ On average, the Individual PAGA Payment is estimated to be \$56.54.¹¹⁶

Finally, the State of California's LWDA will receive \$375,000, which is 75% of the PAGA Payment allocated to settling the PAGA claims in this action.¹¹⁷ Those funds must be used for the enforcement of labor laws and education of California employers and employees about their rights and responsibilities under the Labor Code.¹¹⁸

d) Preclusion of other employment.

As California law recognizes, Class Counsel's commitment to this litigation should not be assessed in a vacuum. A relevant factor in determining attorneys' fees is whether the litigation required Class Counsel to forego other employment.¹¹⁹ During the three-plus years of this litigation, additional work was available that Class Counsel had to forego to devote the time necessary to pursue this litigation.¹²⁰

B. A cross-check using the lodestar method supports Class Counsel's fee request.

Fee calculations under the lodestar method would result in a similar award, demonstrating the fairness of Class Counsel's percentage fee request. Because this is a common fund case, the lodestar method, if used at all, serves only to cross check the reasonableness of the fee request.¹²¹

Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. The base

¹¹⁴ Ex. A at § I.S, I.HH, I.KK., III.L.2.b, III.L.5.

¹¹⁵ Ex. A at §§ III.L.2.a and L.2.b.

¹¹⁶ Grover Decl. at ¶ 29.

¹¹⁷ Ex. A at § III.L.5.

¹¹⁸ See Lab. Code § 2699(i).

¹¹⁹ See *Serrano III*, 20 Cal.3d at 49.

¹²⁰ Grover Decl. at ¶ 59.

¹²¹ See, e.g., *Glass v. UBS Fin. Servs., Inc.*, 331 F. App'x 452, 456 (9th Cir. 2009) (approving the district court's "informal lodestar cross-check" for confirming the reasonableness of the percentage award); *Vizcaino*, 290 F.3d at 1050 (similar).

amount is then adjusted by use of a multiplier in light of various factors.¹²²

Class Counsel's hourly rates are summarized in the Grover Declaration and Bernstein Declaration filed in support of this motion.¹²³ Class Counsel's hourly rates are well within the range of those found permissible for attorneys practicing class action litigation in California.¹²⁴

Class Counsel has spent approximately 1500 hours litigating this case through September 15, 2021, as described in further detail in the Grover and Bernstein Declarations.¹²⁵ The lodestar for Class Counsel through September 15, 2021 is \$1,115,745.¹²⁶ Class Counsel will file supplemental declarations with the final approval motion to provide updates on their hours worked and lodestar.¹²⁷

C. No Class Member has objected to the attorney fee award thus far.

Counsel's intention to request payment of attorneys' fees and out-of-pocket costs was clearly disclosed to each Class Member in the Court-approved Class Notice.¹²⁸ To date, no objection has been filed opposing the request for the maximum potential award of attorneys' fees

¹²² *Serrano III*, 20 Cal. 3d at 48; *In re Consumer Privacy Cases*, 175 Cal.App.4th at 556 (noting factors may include the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 61-67 (2008) (considering factors supporting multiplier of 2.5, including quality of representation, success achieved and rate of acceptance of the settlement benefits).

¹²³ Grover Decl. at ¶¶ 44-49; Bernstein Decl. at ¶ 8.

¹²⁴ See *Gonzalez*, 555 F. App'x at 704-05 (reversing district court's order reducing attorneys' hourly rates without considering evidence of "prevailing hourly rates for comparable legal services in the community"); see also, e.g., *Morrison*, 2021 U.S. Dist. LEXIS 4043, at *21-22 (recognizing other cases in which similar ranges of rates for Bay Area counsel experienced in complex employment class actions were reasonable); *Acosta v. Frito-Lay, Inc.*, No. 15-cv-02128-JSC, 2018 U.S. Dist. LEXIS 75988, at *37-39 (N.D. Cal. May 14, 2018) (similar); *Nitsch v. DreamWorks Animation SKG Inc.*, No. 14-cv-04062-LHK, 2017 U.S. Dist. Lexis 86124, at *32-33 (N.D. Cal. June 5, 2017) (similar); *O'Bannon v. NCAA*, No. 09-cv-03329-CW (NC) 2015 U.S. Dist. LEXIS 91514, at *14 (N.D. Cal. July 13, 2015) (similar); *Steinfeld v. Discover Fin. Servs.*, No. C 12-01118 JSW, 2014 U.S. Dist. LEXIS 48540, at *4-5 (N.D. Cal. Mar. 31, 2014) (similar); *Vedachalam v. Tata Consulting Serv. Ltd.*, No. C 06-0963 CW, 2013 U.S. Dist. LEXIS 100796, at *8 (N.D. Cal. July 18, 2013) (similar); *Bolton v. U.S. Nursing Corp.*, No. C 12-4466 LB, 2013 U.S. Dist. LEXIS 150299, at *14-15 (N.D. Cal. Oct. 18, 2013) (similar); see also, Grover Decl. at ¶¶ 50-51 (noting range of hourly rates approved in recent Bay Area fee orders).

¹²⁵ Grover Decl. at ¶¶ 42-44, Exs. B-E; Bernstein Decl. at ¶¶ 3-4, 9.

¹²⁶ Grover Decl. at ¶¶ 52-53.

¹²⁷ Grover Decl. at ¶ 53.

¹²⁸ RG2 Claims Decl., Ex. A.

and costs, indicating the Class Members' approval of the attorneys' fees award.¹²⁹

D. Class Counsel's request for costs is reasonable.

Class Counsel requests their actual costs that they have incurred litigating this action.¹³⁰ As detailed in the Grover and Bernstein Declarations, in the course of this litigation, Class Counsel has incurred actual out-of-pocket costs in the amount of \$39,383.59 to date.¹³¹ Class Counsel will identify any additional costs incurred in a supplemental declaration to be filed with the final approval motion.¹³² In connection with a settlement, "Class Counsel is entitled to recover those out-of-pocket expenses that would normally be charged to a fee paying client."¹³³

As demonstrated in the Grover and Bernstein Declarations, the incurred costs included filing fees, legal research fees, mediation fees, mailing charges, federal express costs, hotels, travel costs, meals, and deposition transcripts.¹³⁴ The costs that Counsel incurred litigating this action benefitted the Settlement Class Members and are the type of costs that would be billed to a non-contingency client and, therefore, are appropriate for reimbursement. Class Counsel's current cost request is reasonable and should be granted.

E. The Class Representative Incentive Awards are reasonable.

Plaintiffs seek enhancements in the amount of \$5,000 for Plaintiff Parker, who was the

¹²⁹ RG2 Claims Decl. at ¶ 11; Grover Decl. at ¶ 25.

¹³⁰ Ex. A at § III.L.4; Grover Decl. at ¶¶ 61-63, Ex. F.

¹³¹ Grover Decl. at ¶ 63, Ex. F; Bernstein Decl. at ¶ 5.

¹³² Grover Decl. at ¶ 63.

¹³³ *Morrison*, at *22 (internal quotations omitted), citing *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (approving reimbursement of mediation, travel-related, filing and service of process fees). *See also*, *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2007) (approving reimbursement of "photocopying, printing, postage and messenger services, court costs, legal research on Lexis and Westlaw, experts and consultants, and the costs of travel for various attorneys and their staff."); *Larsen v. Trader Joe's Co.*, No. 11-cv-05188-WHO, 2014 U.S. Dist. LEXIS 95538, at *32 (N.D. Cal. July 11, 2014) (approving reimbursement of "the type of expenses routinely charged to hourly clients"); *In re United Energy Corp. Sec. Litig.*, MDL No. 726, 1989 WL 73211, at *6 (C.D. Cal. Mar. 9, 1989) (approving reimbursement of filing fees, postage, telephone bills, photocopying, legal research assistance, deposition costs, and witness fees, citing Newberg, Attorney Fee Awards, § 2.19 (1987)). *See also*, *Greko v. Diesel U.S.A., Inc.*, No. 10-cv-02576 NC, 2013 U.S. Dist. LEXIS 60114, at *35 (N.D. Cal. Apr. 26, 2013) (approving reasonable costs in class settlement); *Van Vranken*, 901 F. Supp. at 299 (same).

¹³⁴ *See* Grover Decl. at ¶ 61, Ex. F; Bernstein Decl. at ¶ 5.

original named plaintiff, and \$2,500 for Plaintiff Gurule.¹³⁵ These payments are intended to recognize the time and effort that the Class Representatives have spent on behalf of the Settlement Class.¹³⁶

Generally, “named plaintiffs are eligible for reasonable incentive payments.”¹³⁷ “In wage and hour cases, many courts in this district have held that a \$5,000 incentive award is presumptively reasonable.”¹³⁸ When determining whether incentive awards are appropriate, courts consider a variety of non-exclusive factors such as:

the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation . . . the risk to the class representative in commencing suit, both financial and otherwise, the notoriety and personal difficulties encountered by the class representative, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.¹³⁹

In this case, the Class Representatives performed the following tasks, among others:

- (1) assisted Class Counsel in investigating and substantiating the claims alleged in this action;
- (2) assisted in the preparation of the complaints in this action; (3) produced evidentiary documents to Class Counsel; (4) were deposed by Defendant, and (5) assisted in the preparation for the mediation and settlement of this litigation.¹⁴⁰ Moreover, as with any plaintiff who files a civil action, the Class Representatives undertook the financial risk that, in the event of a

¹³⁵ Ex. A at § III.L.3.a.

¹³⁶ Grover Decl. at ¶¶ 36-38; *see also*, Declarations of Beatrice Parker and Jeffrey Gurule, Sr. submitted with this motion.

¹³⁷ *Morrison*, 2021 U.S. Dist. LEXIS 4043, at *23 (original alterations, internal quotations omitted), quoting *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) and citing *Rodriguez*, 563 F.3d at 958.

¹³⁸ *Id.*, at *24 (internal quotations omitted), citing cases.

¹³⁹ *Clark*, 175 Cal.App.4th at 804 (internal quotations omitted), citing *Cook*, 142 F.3d at 1016 and *Van Vranken*, 901 F.Supp. at 299. *See also*, *Morrison*, 2021 U.S. Dist. LEXIS 4043, at *24, citing *Rodriguez*, 563 F.3d at 958-59 and weighing similar factors, such as the work done on behalf of the class and former employees’ reputational risk incurred bringing suit against their former employers.

¹⁴⁰ *See generally*, Parker Declaration and Gurule Declaration; *see* Grover Decl. at ¶¶ 36-38.

1 judgment in favor of Defendant in this action, they could have been personally responsible for
2 the costs awarded in favor of the Defendant.

3 Thus far, no Class Member has objected to the enhancements requested on behalf of the
4 Class Representatives who brought this litigation on their behalf and who secured a benefit for
5 them.¹⁴¹ In light of the work that the Class Representatives performed on behalf of Class
6 Members, and the Class Members' positive response to the settlement, the requested
7 enhancements are reasonable and appropriate.

8 **F. Plaintiffs seek approval of the General Release Payments to settle the named**
9 **Plaintiffs' remaining individual claims against Defendant.**

10 The Settlement Agreement provides that, because the named Plaintiffs have individual
11 claims in this action that would not be resolved by the Limited Release applicable to all
12 Settlement Class Members, they will enter into a General Release in exchange for a payment of
13 \$20,000 each.¹⁴² As detailed in their respective declarations, the individual wage claims of each
14 Plaintiff have a value in excess of \$20,000.¹⁴³

15 The General Release does not apply to or affect the Settlement Class Members.¹⁴⁴ The
16 General Release Payments are not preferential treatment because the Settlement Class Members
17 will not be subject to or affected by the General Release. The inclusion of the General Release
18 Payments enables the Parties to resolve the entire action.¹⁴⁵

19 **G. Plaintiffs seek conditional approval of the Settlement Administrator's fees.**

20 As part of the preliminary approval process, the Court approved the hiring of RG2 Claims
21 as the Settlement Administrator.¹⁴⁶ In preliminarily approving the Settlement Agreement, the
22 Court also tentatively approved the payment to RG2 Claims of up to \$16,000 to perform all of the
23 duties required to administer the settlement.¹⁴⁷ RG2 Claims has performed all of its required

24 ¹⁴¹ See RG2 Decl. at ¶ 11; Grover Decl. at ¶ 25.

25 ¹⁴² Ex. A at §§ III.L.3 and II.C; Grover Decl. at ¶¶ 39-40.

26 ¹⁴³ Parker Decl. at ¶¶ 23-29; Gurule Decl. at ¶¶ 16-23.

27 ¹⁴⁴ See *id.*

28 ¹⁴⁵ Grover Decl. at ¶ 40.

¹⁴⁶ Dkt. 97 at pp. 6, 10.

¹⁴⁷ See Dkt. 97; Ex. A at § III.L.6.

1 duties to date and is committed to completing the settlement administration process.¹⁴⁸ In a
 2 supplemental declaration to be filed with the final approval motion, RG2 Claims will provide
 3 information on the work it performs and the associated costs.

4 **V. CONCLUSION**

5 For all of the foregoing reasons, Plaintiffs request that the Court (1) approve Class
 6 Counsel's request for an award of attorneys' fees in the amount of \$750,000, (2) approve Class
 7 Counsel's request for payment of current actual costs incurred plus any additional amount to be
 8 updated at final approval, (3) approve the Class Representative Incentive Awards in the amount
 9 of \$5,000 for Plaintiff Parker and \$2,500 for Plaintiff Gurule, (4) approve the General Release
 10 Payments in the amount of \$20,000 each to Plaintiff Parker and Plaintiff Gurule, and (5) approve
 11 payment to RG2 Claims for the costs it incurred administering this settlement in an amount not
 12 exceed \$16,000.

13
 14 Dated: September 17, 2021

KELLER GROVER LLP

15 By:

/s/ *Eric A. Grover*

16 ERIC A. GROVER

17 ROBERT SPENCER

18 *Attorneys for Plaintiffs and Certified Class*

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 28 ¹⁴⁸ See generally, RG2 Claims Declaration.