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on behalf of themselves and all others similarly situated

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN**

MARIE DEMARTINI, WILLIE AUSTIN,
JR., and JOSE SOTO, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

SAFELITE FULFILLMENT, INC., DBA
SAFELITE AUTO GLASS, a Delaware
Corporation; SAFELITE SOLUTIONS,
LLC, a Delaware Corporation; BARRETT
BUSINESS SERVICES, INC., a Maryland
Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. CIV20002076
Assigned for All Purposes To:
Hon. Sheila Lichtblau
Dept. H

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AGREEMENT AND
AWARD OF ATTORNEYS' FEES, COSTS,
AND CLASS REPRESENTATIVE
SERVICE PAYMENT**

Date: January 22, 2025
Time: 1:30 p.m.
Dept.: Courtroom H

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I. INTRODUCTION

This motion seeks final approval of a common fund, non-reversionary wage and hour class action and Private Attorneys General Act (“PAGA”) settlement of \$3,000,000.00 between Plaintiffs Marie DeMartini, Willie Austin, Jr., and Jose Soto (“Plaintiffs”), on behalf of themselves and the Class, and Defendants Safelite Fulfillment, Inc, Safelite Solutions, LLC, and Barrett Business Services, Inc. (“Defendants”)(collectively with Plaintiffs, the “Parties”).

The Class Action Settlement Agreement (“Settlement”) was preliminarily approved on August 22, 2024. The Settlement Administrator, ILYM Group, Inc. (“ILYM”) carried out the notice and other procedures ordered by this Court. The court-approved Class Notice (“Notice”) was mailed on October 18, 2024. The Class Members had until December 17, 2024 to request exclusion from or object to the Settlement, or dispute their number of workweeks. No Class Members have objected to the Settlement, and only four Class Members have requested exclusion from the Settlement. Class Counsel and Defendants’ Counsel are experienced in wage and hour class action litigation, and agree the Settlement is fair, reasonable, and adequate.

Plaintiffs also request the Court grant Attorneys’ Fees and Costs in the amounts of \$1,000,000¹ for attorneys’ fees and \$22,513.47 for actual and anticipated costs. Plaintiffs further request that this Court award a \$10,000 service payment to each Plaintiff for obtaining this result for the Class. The Settlement meets the criteria for final approval and Plaintiffs request this Court grant final approval and enter the proposed Order and Judgment filed concurrently herewith.

II. SUMMARY OF PRELIMINARILY APPROVED SETTLEMENT TERMS

The Preliminary Approved Settlement provides for the following monetary terms:

Gross Settlement Amount (“GSA”)	\$3,000,000
Net Settlement Amount (“NSA”)	\$1,859,000
Administration Fee	\$25,000
Class Representative Service Payments	Up to \$30,000 (\$10,000 to each Plaintiff)
Class Counsel’s Attorneys’ Fees	\$1,000,000 (33-1/3% of the GSA)
Class Counsel’s Costs	Up to \$26,000
PAGA Payment	\$60,000

¹ James Hawkins APLC will receive 75% of the awarded attorneys’ fees and Blumenthal Nordrehaug Bhowmik De Blouw LLP will receive 75% of the awarded attorneys’ fees. (Settlement § 2.2.2).

1 Participating Class Members will receive their corresponding share of the NSA without
2 the need to submit a claim form. Individual Class Settlement Shares will be calculated by dividing
3 the NSA by the total number of Workweeks worked by all Participating Class Members during
4 the Class Period and multiplying the result by each Participating Class Member's Workweeks.
5 (Settlement § 2.2.5). 25% of Individual Class Settlement Shares will be allocated to wages, and
6 75% to the settlement of disputed claims for interest and penalties. (Id. § 2.2.6).

7 As of the Effective Final Settlement Date and Defendants' funding of the GSA,
8 Participating Class Members will release the Released Parties from the Release Claims as defined
9 in the Settlement. Plaintiffs will also provide a general release of all claims and a waiver of
10 Section 1542 of the California Civil Code. (Id. §§ 4.1, 4.2).

11 **III. THE SETTLEMENT ADMINISTRATOR MAILED THE NOTICE AND NO** 12 **REQUESTS FOR EXCLUSION WERE SUBMITTED**

13 On September 11, 2024 ILYM received the Class List from Defendants' counsel including
14 name, personnel number, social security number, last known mailing address, last known
15 telephone number, class workweeks, and PAGA pay periods for each Settlement Class Member.
16 Class Member addresses were then processed against the NCOA database to determine updated
17 addresses. (Declaration of Nathalie Hernandez ("Hernandez Decl.") ¶ 5-6).

18 On October 18, 2024 ILYM mailed, via U.S. First Class mail, the Notice to 2,735 Class
19 Members. (Id. ¶ 7). The Notice advised Class Members of their rights to request exclusion from
20 or object to the Settlement, and how to dispute the number of workweeks, and the implications of
21 each action. The Notice advised Class Members of applicable deadlines and other events,
22 including the Final Approval Hearing, and how Class Members could obtain additional
23 information, and provided a toll-free telephone number. The Notice also disclosed the claims that
24 would be released upon final approval and each Class Member's estimated Individual Class
25 Settlement Share and Individual PAGA Settlement Share.

26 ILYM mailed a total of 2,735 Notices to Class Members and 195 were returned by the
27 U.S. Postal Service without a forwarding address. (Id. ¶ 8). After receiving the returned Notices,
28 ILYM performed an additional skip trace to locate a current address for purposes of re-mailing

1 the Notices. (Id.). ILYM obtained updated or forwarding addresses for 132 Class Members and
2 the Notices were promptly re-mailed. (Id. ¶ 9). A total of 63 Notices were deemed undeliverable.
3 (Id. ¶ 10). ILYM successfully delivered Notices to 2,672 of the 2,735 Class Members,
4 representing approximately 97.7% of the Settlement Class. (Id. ¶ 10.)

5 The deadline to object to or request exclusion from the Settlement was December 17,
6 2024. (Id. ¶ 11). ILYM received four requests for exclusion, and no objections or disputes as to
7 workweeks. (Id. ¶¶ 11-12). Thus, 99.85% of Class Members will participate. (Id. ¶ 13).

8 ILYM followed all the notice procedures delineated by this Court in the Preliminary
9 Approval Order. Therefore, notice to the Class of the proposed Settlement was reasonably
10 calculated, and has apprised the Class Members of the pendency of the action and afforded them
11 an opportunity to opt out or present their objections or disputes.

12 **IV. THE SETTLEMENT SATISFIES THE REQUIREMENTS FOR FINAL** 13 **APPROVAL.**

14 **A. Legal Standard for Final Approval of Class Action Settlement.**

15 “[V]oluntary conciliation and settlement are the preferred means of dispute resolution.
16 This is especially true in complex class action litigation . . .” (*7-Eleven Owners for Fair*
17 *Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1140, 1151 (internal citation omitted)).
18 A class action may not be dismissed, compromised, or settled without the Court’s approval. (Cal.
19 Rules of Court (“CRC”) 3.769 and 3.770). The Court’s inquiry is limited to whether the proposed
20 settlement is “fair, adequate, and reasonable.” (*Wershba v. Apple Comp., Inc.* (2001) 91 Cal. App.
21 4th 224, 244-245). A settlement is “fair, adequate and reasonable” warranting final approval when
22 “the interests of the class are better served by the settlement than by further litigation.” (Manual
23 for Complex Litigation (4th ed. 2008) § 21.61).

24 CRC 3.769 describes the procedure for final approval of a class action settlement in three
25 distinct steps: (1) Preliminary approval; (2) Dissemination of mailed and/or published notice of
26 the settlement to all Class Members; and (3) A “formal fairness hearing,” or final settlement
27 approval hearing, at which Class Members may be heard regarding the settlement, and at which
28 matters concerning the fairness, adequacy, and reasonableness of the settlement may be presented.

1 In this case, the first step was completed on August 22, 2024 when the Court preliminarily
2 approved the Settlement and determined that it was within the range reasonableness. The second
3 step, dissemination of Notice to the Class, was completed on or about October 18, 2024.
4 (Hernandez Decl., ¶ 7).

5 The third and final step in the settlement approval process is the Final Approval Hearing,
6 at which the Court determines whether the Settlement is fair, adequate, and reasonable. A
7 settlement is presumptively fair when it is (1) the product of arm's-length bargaining; (2)
8 supported by sufficient investigation and/or discovery to allow assessment of Plaintiffs' claims;
9 (3) supported by experienced counsel; and (4) subject to only a small percentage of objections.
10 (*In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1389 quoting *Dunk v.*
11 *Ford Motor Co.*, (1996) 48 Cal. App. 4th 1801, 1802; *Chavez v. Netflix, Inc.* (2008) 162 Cal. App.
12 4th 43, 52).

13 Following the final approval hearing, the Court will decide whether to enter a final order
14 approving the Settlement and enter judgment thereon. CRC 3.769(h). To do so, California courts
15 consider several factors, including the strength of the Plaintiffs' case; the risk, expense,
16 complexity, and likely duration of further litigation; the risk of maintaining class action status
17 through trial; the value of the settlement; the extent of discovery completed and the stage of the
18 proceedings; the experience and views of counsel; and the reaction of the class members to the
19 proposed settlement. (*Wershba*, 91 Cal. App. 4th at 244-45). "The list of factors is not exclusive
20 and the court is free to engage in a balancing and weighing of factors depending on the
21 circumstances of each case." (Id. 245). Courts must also give "proper deference to the private
22 consensual decision of the parties, [since] the court's intrusion upon what is otherwise a private
23 consensual agreement negotiated between the parties to a lawsuit must be limited to the extent
24 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
25 overreaching by, or collusion between, the negotiating parties, and the settlement, taken as a
26 whole, is fair, reasonable and adequate to all concerned. (*Hanlon v. Chrysler Corp.* (9th Cir. 1998)
27 150 F.3d 1011, 1027). For the reasons set forth below, the Court should complete the third step,
28 and grant final approval of the Settlement.

1 **B. The Factors to be Considered Favor Final Approval**

2 Settlement resolves inherent uncertainty and is therefore strongly favored by the courts,
3 particularly in class actions. (*See Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943,
4 950). Here, Plaintiffs recognized several risks inherent in litigating this case: (1) the probability
5 of certifying the action as a class action; (2) the probability of maintaining the class action status
6 through trial; (3) the likelihood of class action recovery at trial after analyzing the merits of
7 Defendants' legal defenses; and (4) the current state of the law regarding certification and
8 establishing common questions of fact.

9 As discussed in detail in Plaintiffs' Motion for Preliminary Approval, Defendants presented
10 strong arguments against Plaintiffs' claims and class certification. To summarize, Defendants argued that
11 they provided lawful meal and rest periods and paid for all hours worked, and that their policies required
12 the payment of premiums and wages for all reported time and missed meal or rest periods. Defendants
13 contended that employees were instructed to clock in before performing any work, including putting on
14 uniforms and protective gear, and that any inspections were on the clock. They also argued that Defendants
15 incorporated all non-discretionary sums in the regular rate and that premiums were lawfully paid.
16 Defendants further contended that they provided employees with all necessary tools and items and denied
17 that cellular phones were not required to perform job duties. Defendants further argued that with regard to
18 PAGA, penalties could not be stacked, penalties would constitute double recovery, and given the
19 circumstances, it was unlikely that a judge would exercise their discretion to award substantial penalties.
20 While the Parties disagree over the scope of Defendants' exposure to the alleged claims and the merits of
21 the claims themselves, counsel for the Parties agree that the Settlement reached is fair, reasonable, and
22 adequate and is in the best interest of the Class in light of all known facts and circumstances.

23 Although the proposed Settlement may be less than the amount that the Class could
24 potentially recover following trial, it is highly unlikely that Plaintiffs and the Class would receive
25 the full amount to which they believe they are entitled for the reasons discussed above. As such,
26 the GSA, even if only a fraction of a total *potential* recovery, is a fair and adequate *real* recovery
27 for Class Members. (*See In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459).

28 **A. The Value and Fairness of the Settlement Favors Final Approval.**

1 A court must consider whether the settlement is fair. *See Hanlon*, 150 F. 3d 1027. The
2 monetary relief provided by the Settlement is a meaningful recovery to the Class warranting final
3 approval. In conjunction with Plaintiffs' Motion for Preliminary Approval, Class Counsel
4 provided the Court with a detailed description of the claims, defenses and Defendants' potential
5 exposure on those claims, thereby providing the Court with a sufficient understanding of the
6 amount in controversy and potential outcomes of the case, so that it can properly evaluate the
7 sufficiency of the Settlement, as required in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
8 116, 129-30 (2008). At the time of preliminary approval, the Court made a finding that the
9 Settlement appeared to be fair, adequate and reasonable and favors preliminary approval.
10 Moreover, no Class Members objected to the Settlement and only four opted out of the Class to
11 pursue their individual claims. Thus, nothing has changed since the time of preliminary approval,
12 which also favors final approval.

13 Plaintiffs secured a common fund of \$3,000,000.00 for the Settlement of the claims
14 alleged in the class and PAGA action. This is well within the ballpark of reasonableness and is
15 submitted to be a meaningful benefit to the Class Members. The 2,731 Participating Class
16 Members will be paid a pro-rata portion of the NSA. As such, the Settlement treats each
17 Participating Class Member equally relative to others in the Class. While Class Counsel believes
18 Plaintiffs' claims are meritorious, Defendants have raised formidable factual and legal arguments
19 in support of their defenses. Given these available grounds for defending against the asserted class
20 claims and the risks of maintaining class certification through the trial and after any appeals, the
21 Settlement is fair, reasonable, and adequate. (Declaration of James Hawkins ("Hawkins Decl.")
22 ¶¶ 18-21).

23 **B. The Parties' Investigation Favors Final Approval**

24 "[T]he extent of discovery completed and the stage of proceedings" are factors considered
25 in assessing the fairness, adequacy, and reasonableness of a class action Settlement. (*Dunk*,
26 *supra*). "This factor evaluates whether the parties have sufficient information to make an informed
27 decision about settlement." (*In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 588 (N.D. Cal.
28 2015) (citation omitted)).

1 The Parties entered into the Settlement after conducting an extensive investigation, which
2 enabled Class Counsel and Defense Counsel to thoroughly evaluate the strengths and weaknesses
3 of the claims. Class Counsel previously provided the Court with a detailed description of the
4 investigation conducted in this action in conjunction with the Motion for Preliminary Approval.
5 The settlement negotiations between the Parties were extensive and occurred at arm's length. The
6 Parties attended a full day mediation session with the experienced wage and hour mediator Hon.
7 John Leo Wagner, Ret. Thus, the Parties' investigation and discovery are sufficient to allow Class
8 Counsel and the Court to act intelligently.

9 **C. The Endorsement of the Parties' Counsel Favors Final Approval**

10 The endorsement of experienced and well-informed counsel of a settlement as fair,
11 reasonable, and adequate is entitled to significant weight. (*Dunk* at 1801-02). Here, counsel for
12 both Parties have significant experience litigating wage and hour class actions and endorse the
13 Settlement as being fair, adequate, and reasonable. Class Counsel believes that the Settlement is
14 the best interest of the Class, and an excellent result for the Class. This endorsement of counsel
15 is entitled to significant weight in favor of final approval.

16 **V. THE ATTORNEYS' FEES REQUESTED ARE FAIR AND REASONABLE**
17 **AND FAVOR APPROVAL**

18 "When a fee is set by a court rather than by contract, the object is to set it at a level that
19 will approximate what the market would set. . . . The judge, in other words, is trying to mimic the
20 market in legal services." (*Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363). Given the unique
21 reliance of our legal system on private litigants to enforce substantive provisions of law in class
22 actions, attorneys providing these substantial benefits should be paid an award equal to the
23 amount negotiated in private bargaining that takes place in the legal marketplace. (*Deposit*
24 *Guaranty Nat. Bank, Jackson, Miss. v. Roper* (1980) 445 U.S. 326, 338, *rehg. denied*, 446 U.S.
25 947). The "percentage of the fund method more accurately reflects the results achieved." (*Laffitte*
26 *v. Robert Half International, Inc.*, 1 Cal. 5th 439 (2016); see also *Lealao v. Beneficial California,*
27 *Inc.* (2000) 82 Cal.App.4th 19, 50).

28 At the time this case was brought, the result was far from certain. Defendants' numerous

1 defenses to the case created difficulties with proof and complex legal issues for Class Counsel to
2 overcome. Throughout the action, Defendants have challenged whether Plaintiffs can prove
3 commonality. As a result, there was considerable risk that Plaintiffs would not prevail on a motion
4 for certification or that Defendants would prevail on its defenses, thus, defeating any and all
5 recovery to the Class. Even if Plaintiffs were to obtain class certification, liability is by no means
6 a foregone conclusion. (Hawkins Decl. ¶¶ 18-21). The Settlement was possible only because
7 Class Counsel was able to persuade Defendants that Class Counsel could potentially prevail on
8 the legal issues regarding liability and obtain and maintain class certification for the Class through
9 trial and overcome difficulties in proof as to monetary relief. In successfully navigating these
10 hurdles so as to persuade Defendants to settle, Class Counsel displayed skills consistent with
11 those that might be expected of attorneys of comparable experience.

12 To represent the Class on a contingent fee basis, Class Counsel had to devote the necessary
13 time and resources to this contingent case. (Hawkins Decl. ¶¶ 43-50). Class Counsel gave up the
14 hourly work that a firm can bank on for the risky contingent fee work in this case which could
15 have paid Class Counsel nothing. (*Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000)).

16 **A. An Award of Attorneys' Fees and Costs is Appropriate and Should be Enforced**

17 Parties to a class action may negotiate not only the settlement of the action itself, but also
18 the payment of attorneys' fees. (See *Evans v. Jeff D.* (1980) 475 U.S. 717, 734-35, 738, n.30).
19 "Ideally, of course, litigants will settle the amount of a fee." (*Hensley v. Eckerhart* (1983) 461
20 U.S. 424, 437). The trial court "has a responsibility to encourage agreement" on fees. (*Blum v.*
21 *Stenson* (1984) 465 U.S. 886, 902 n.19). Here, as part of the Settlement, Defendants agreed not
22 to oppose an award of one-third (1/3) of the GSA for attorneys' fees. Such a fee is in line with
23 what the market would provide for similar services and the Court therefore can most certainly
24 enforce the agreement. The United States Supreme Court instructed, ". . .attorneys providing the
25 essential enforcement services must be provided incentives roughly comparable to those
26 negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise
27 be economic for Defendants to increase injurious behavior." (*Deposit Guaranty Nat. Bank, supra*,
28 445 U.S. at 338).

1 Here, the requested fee and cost award was negotiated during adversarial bargaining by
2 counsel for each of the parties, after the substantive terms of the Settlement had been negotiated.
3 The requested fee and cost award was a product of arms-length negotiations and fairly reflects
4 the marketplace value of the services rendered by Class Counsel in this case. Thus, the fee agreed
5 to by the parties should be approved.

6 **B. Class Counsel's Fee Award is Properly Calculated as a Percentage of the Total**
7 **Value Created for the Benefit of the Class**

8 Class Counsel seeks an attorneys' fee award calculated as 33 1/3% of the value of the
9 common fund created by the Settlement. Courts have long recognized that an appropriate method
10 for determining the award of attorneys' fees is based on a percentage of the total value of benefits
11 afforded to class members by the settlement. (*Laffitte*, 1 Cal. 5th at 494; *Boeing Co. v. Van Gemert*
12 (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268,
13 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769). Awarding a fee based
14 on a percentage of the common fund recovered will "spread litigation costs proportionately
15 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone."
16 *Vincent, supra*, 557 F.2d at 769. Class Counsel requests \$1,000,000 in attorneys' fees which is
17 33 1/3% of the common fund created for the benefit of the Class.

18 **1. In a Common Fund Case, the Supreme Court Approves an Award Based**
19 **Upon the Percentage of the Fund**

20 California courts are expressly authorized to award attorneys' fees so as "to ensure that
21 the fee awarded is within the range of fees freely negotiated in the legal marketplace in
22 comparable litigation." (*Lealao v. Beneficial Cal., Inc., supra*, 82 Cal.App.4th at 50). As *Lealao*
23 explained, "attorneys providing the essential enforcement services must be provided incentives
24 roughly comparable to those negotiated in the private bargaining that takes place in the legal
25 marketplace, as it will otherwise be economic for Defendants to increase injurious behavior. It
26 has therefore been urged (most persistently by Judge Richard Posner) that in defining a
27 'reasonable fee' in such representative actions the law should "mimic the market." (*Id.* at 47).

28 In this case, the fees are being paid from the common fund, accordingly, the fee should be
awarded to mimic fees freely negotiated in the legal marketplace for comparable common fund

1 cases. As *Lealao* acknowledged, the percentage-of-the-benefit approach should be considered
2 because here “it better approximates the workings of the marketplace than the lodestar approach.”
3 (*Id.* at 49; see also *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270).
4 In *Laffitte*, the California Supreme Court confirmed that the percentage of the fund method is
5 properly used in a common fund case:

6 The recognized advantages of the percentage method – including relative ease of
7 calculation, alignment of incentives between counsel and the class, a better
8 approximation of market conditions in a contingency case, and the encouragement
9 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
10 the litigation —persuade us the percentage method is a valuable tool that should
11 not be denied our trial courts.

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

13 Moreover, the Supreme Court in *Laffitte* indicated that the trial courts may utilize a
14 “lodestar cross-check” to double check the reasonableness of the percentage fee award. (*Id.*) The
15 Supreme Court affirmed the propriety of a lodestar cross-check where the multiplier exceeded 2.
16 Indeed, the Court explicitly held that the lodestar is a cross check that should not override the
17 primary use of the percentage method in stating, “[W]e emphasize the lodestar calculation, when
18 used in this manner, does not override the trial court's primary determination of the fee as a
19 percentage of the common fund and thus does not impose an absolute maximum or minimum on
20 the potential fee award . . . A lodestar cross-check is simply a quantitative method for bringing a
21 measure of the time spent by counsel into the trial court's reasonableness determination; as such,
22 it is not likely to radically alter the incentives created by a court's use of the percentage method.”
23 (*Id.* at 505).

24 Because the Settlement is a common fund, and the percentage of the fund is the
25 comparable marketplace for fee awards in common fund cases, *Laffitte* and *Lealao* support an
26 award based upon the percentage of the common fund. Here, as noted above, one-third is within
27 the reasonable range of comparable awards for common fund cases, which establishes the
28 requested award as reasonable. Moreover, as discussed below, the use of the lodestar cross-check
in this case further supports the reasonableness of the percentage fee award as it falls squarely
within the range approved in *Laffitte*.

1 **2. The Percentage Fee Award is Supported by a Lodestar Cross-Check**

2 The reasonableness of the requested attorneys’ fee of \$1,000,000 is also established by
3 reference to Class Counsel’s lodestar cross-check in this matter. The lodestar for Class Counsel
4 in this case is \$520,200, and therefore the requested fee would require a multiplier of 1.92.
5 (Hawkins Decl. ¶ 50; Declaration of Kyle Nordrehaug (“Nordrehaug Decl.”) ¶ 10).¹ This amount
6 does not include the time that will be spent on administering this settlement following final
7 approval and responding to inquiries by class members, which is likely to be a significant
8 additional investment of time. Thus, this Court should conclude that the award is justified and
9 cross checks under California law. In this case, the lodestar cross-check of the percentage figure
10 strongly supports the reasonableness of the requested fee award.

11 **3. The Percentage Award is Reasonable**

12 Fee determinations in both common fund and statutory fee situations are incapable of
13 mathematical precision because of the intangible factors that must be resolved in the court’s
14 discretion based on the circumstances of each particular case. (See, A. Conte, Attorney Fee
15 Awards, 2nd Ed., 207, at 44). A court must decide, based on the unique posture of each case, what
16 percentage of the common fund would most reasonably compensate Class Counsel given the
17 nature of the litigation and the performance of counsel. (*Paul, Johnson, Alston & Hunt, supra*,
18 886 F.2d at 272). Courts apply a five-part test in reviewing a reasonable percentage fee in common
19 fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality
20 of work; (4) the contingent nature of the fee and the financial burden carried by the Plaintiffs; and
21 (5) awards made in similar cases. (*In re Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007
22 WL 4293467 at *9). Here, each of the five factors are met and strongly support the award of a
23 percentage fee (33-1/3%) requested in this case.

24 **a. The Results Achieved**

25 “The overall result and benefit to the class from the litigation is the most critical factor in
26 granting a fee award.” (*Id.*). Class Counsel obtained a very favorable result in this case for the
27 Class Members. The Settlement provides monetary benefits to the Class Members that are

28 _____
¹ James Hawkins APLC’s lodestar is \$366,130. Blumenthal Nordrehaug Bhowmik De Blouw’s lodestar is \$154,070.

comparable to or even exceed those recovered in similar wage and hour class actions because the claimants will all receive a meaningful payment of their damages. (Hawkins Decl. ¶ 18-21). The Settlement is advantageous to the Class Members because the proceeds will be distributed shortly as opposed to waiting additional years for a similar, or possibly, less favorable result. There is little question that the result achieved in this litigation is favorable. The estimated Net Settlement Amount to be paid to the Class Members is \$1,862,486.53, with an average estimated payment of \$680.98 and the highest being \$2,280.46. (Hernandez Decl., ¶ 14).

b. The Risks of Litigation

“The risk that further litigation might result in Plaintiffs not recovering at all, particularly a case involving complicated legal issues, is a significant factor in the award of fees.” (*Omnivision*, 2007 WL 4293467 at *9). As detailed above, the result was far from certain. Here, and as extensively detailed in Plaintiffs’ Motion for Preliminary Approval, a number of defenses asserted by Defendants present serious threats to the claims of Plaintiffs and the other Class Members. There was considerable risk that Plaintiffs would not prevail on a motion for class certification and/or Defendants would prevail on their defenses, thus, defeating any and all recovery to the class. Even if Plaintiffs successfully obtained class certification of the wage and hour claims, proving class-wide liability was by no means a foregone conclusion. All of these were very substantial risks any of which could have resulted in the Class receiving nothing if the claims were litigated.

c. The Skill Required and the Quality of Work

Practice in the narrow areas of wage and hour and class action litigation requires skill, knowledge and experience in two distinct subsets of the law, and class counsel must have expertise in both. The issues presented in this case required more than a general appreciation of wage and hour law and class action procedure as this area of practice is still developing as evidenced by the California Supreme Court’s ruling in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004 and the Court of Appeal’s rulings in *Gonzales v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 and *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98. The Settlement was possible only because Class Counsel was able to persuade

1 Defendants that Plaintiffs could potentially prevail on the difficult legal issues regarding liability,
2 maintain class certification, overcome difficulties in proof as to monetary relief and take the case
3 to trial. (Hawkins Decl. ¶ 18-21).

4 In successfully navigating these hurdles Class Counsel displayed the necessary dual skill
5 set. The high quality of the work in this case was mandated by the very vigorous and contentious
6 defense presented by counsel for Defendants. Class Counsel was required to invest substantial
7 time and resources in every stage of this action. (Id. at ¶¶ 29-34). The favorable result obtained
8 by the settlement supports the skill and quality of work of Class Counsel.

9 **d. The Contingent Nature of the Fee and Financial Burden**

10 There is a substantial difference between the risk assumed by attorneys being paid by the
11 hour and attorneys working on a contingent fee basis. (*Powers v. Eichen* (9th Cir. 2000) 229 F.3d
12 1249, 1256). Attorney working on a contingent basis can only log hours while working without
13 pay in hopes of prevailing and earning a contingent fee, and assuming the inherent risk of
14 receiving nothing. (Id. at 1257).

15 In this case, Class Counsel took the risk in this contingent fee case. The necessity and
16 financial burden of private enforcement makes the requested award appropriate. Counsel retained
17 on a contingency fee basis is entitled to a premium in order to compensate for both the risks and
18 the delay in payment. (See e.g. *Stanger v. China Elec. Motor, Inc.* (9th Cir. 2016) 812 F.3d 734
19 (courts “must” apply a risk enhancement); *Stetson v. Grissom* (9th Cir. 2016) 821 F.3d 1157, 1166
20 (abuse of discretion not to apply risk multiplier). Despite the most vigorous and competent of
21 efforts, success is never guaranteed. (*McKittrick v. Gardner* (4th Cir. 1967) 378 F.2d 872, 875)).
22 If counsel is not adequately compensated for the risks inherent in difficult class actions, competent
23 attorneys will be discouraged from prosecuting similar cases. (*Steiner v. BOC Financial Corp.*
24 (S.D.N.Y. 1980) 1980 U.S. Dist. LEXIS 14561 at *6- *7). Here, a number of difficult issues, any
25 one of which could have doomed the successful prosecution of the action, were present. As
26 discussed above, attorneys’ fees in this case were risky, with a real chance that Class Counsel
27 would receive nothing for their efforts, having devoted a significant amount of time and advanced
28 costs. In this type of litigation where the corporate defendants and their attorneys are well funded,

1 this can prove to be very expensive and risky, and cost prohibitive to many attorneys. Class
2 Counsel has advanced \$22,513.47 in costs which could not have been recovered if this case had
3 been lost. (Hawkins Decl., ¶ 51, Ex. 1; Nordrehaug Decl., ¶ 12, Ex. 1).

4 **e. Awards in Similar Cases**

5 The attorneys' fees requested by Class Counsel are within the range of fees awarded in
6 comparable cases. Courts have historically awarded fees in the range of 20% to 50%. (*In re*
7 *Warner Communications Sec. Lit* (S.D. N.Y. 1985) 618 F.Supp. 735, 749-50). Class Counsels'
8 requested fees are one-third (1/3) of the total value of the case, a percentage well within the range
9 of reasonableness given the excellent results obtained for the Class, the risks undertaken, and the
10 skill of the prosecution. (*See Laffitte*, 1 Cal. 5th at 486, 506).

11 **4. Class Counsel's Costs Were Reasonably Incurred**

12 Class Counsel requests reimbursement for expenses and costs in the amount of
13 \$22,513.47, which less than the \$26,000 preliminarily approved by this Court. These litigation
14 expenses were reasonably incurred in the prosecution of this matter and are detailed in the
15 Declarations of Class Counsel. (Hawkins Decl., ¶ 53; Ex. 1, Nordrehaug Decl. ¶ 12, Ex. 1).¹

16 **5. The Class Representative Should Receive the Requested Service Payment**

17 Plaintiffs submit that for their service as the Class Representatives, they should be
18 awarded \$10,000 each (\$30,000 total) as Class Representative Service Payments. Defendants do
19 not oppose these payments to Plaintiffs.

20 Plaintiffs have performed their duties to the Class admirably and without exception. The
21 full extent of Plaintiffs' participation is testified to in the Declaration of James R. Hawkins and
22 the Declarations of Plaintiffs filed concurrently herewith. Plaintiffs assumed the risk that they
23 might possibly be liable for costs incurred in connection with this case. Plaintiffs also risked being
24 "blacklisted" by other future employers for having sued Defendants in a class action. (*See*
25 *Guippone v. BH S&B Holdings LLC* (S.D.N.Y. Oct. 28, 2011) 2011 U.S. Dist. LEXIS 126026, at
26 **4, 20). Without Plaintiffs' support, cooperation and information, no other employees would

27
28 ¹ James Hawkins APLC has incurred \$16,947.70 in actual costs and anticipates a further \$250.63 in costs associated with this motion. Blumenthal Nordrehaug Bhowmik De Blouw LLP has incurred \$5,315.14 in actual costs.

1 receive any benefit. The payment of the service awards to a successful class representative is
2 appropriate and the total amount of \$30,000 is a reasonable portion of the total Settlement secured
3 on behalf of the Class. This payment is to compensate Plaintiffs for their effort and risk in bringing
4 this case to benefit the other Class Members and secure a total settlement of \$3,000,000.

5 **VI. THE SETTLEMENT ADMINISTRATOR'S REQUESTED EXPENSES ARE**
6 **REASONABLE AND APPROPRIATE.**

7 The parties retained a neutral third-party administrator, ILYM, to administer the notice
8 process. ILYM's duties include those testified to in the Declaration of Nathalie Hernandez
9 (Hernandez Decl. ¶ 3). ILYM's expenses for administering the Settlement are \$25,000, which
10 Plaintiffs believe is appropriate and request the Court award to ILYM (Id. ¶ 15).

11 **VII. CONCLUSION**

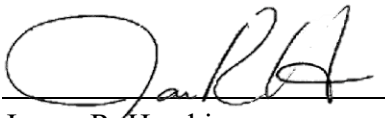
12 The Settlement is the product of arm's length negotiations after significant investigation
13 and discovery, mediation, and negotiation. It provides meaningful benefits to the Class Members
14 that are discernibly fair when weighed against the significant potential risks, delays, and costs of
15 further litigation. Thus, Plaintiffs request that the Court grant final approval to the Settlement.

16 In addition, Class Counsel's fee request is well within the realm of reasonableness
17 approved by courts given the efforts expended in this case. Class Counsel undertook great risks
18 on a contingent fee basis and achieved a favorable result for the benefit of Class Members. Class
19 Counsel requests approval of the application for award of attorneys' fees of \$1,000,000,
20 reimbursement of litigations costs of \$22,513,47 and a service payment to the Plaintiffs as Class
21 Representatives of \$10,000 each (\$30,000 total).

22 Dated: December 23, 2024

JAMES HAWKINS, APLC

23
24
25 By:


James R. Hawkins
Christina M. Lucio
Mitchell J. Murray

26
27 Attorneys for Plaintiffs
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