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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

BLADIMIR LOPEZ MILLAN on behalf of himself and all others similarly situated, Plaintiff, vs. BOUTON CONSTRUCTION, INC., a California corporation, and DOES 1 through 50, inclusive, Defendant.	Case No. 20CV371719 ASSIGNED FOR ALL PURPOSES TO: JUDGE: Hon. Theodore C. Zayner DEPT.: 19 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** [Declarations of Anthony L. Draper, and Katie Tran in Support Thereof, and any additional supporting declarations filed concurrently herewith] Date: August 19, 2026 Time: 1:30 p.m. Dept.: 19

PLEASE TAKE NOTICE THAT on August 19, 2026, at 1:30 p.m., in Department 19 of the above-entitled Court located at 191 North First Street, San Jose, CA 95113, Plaintiff Bladimir Lopez Millan ("Plaintiff") will and hereby does move the Court for an Order: (1) granting final approval of the Class Action and PAGA Settlement Agreement ("Settlement Agreement"); (2) approving the Gross Settlement Amount of Eight Hundred Twenty-Five Thousand Dollars ($825,000.00); (3) approving all settlement payments pursuant to the Settlement Agreement; (4) approving a Class Representative Service Payment of Ten Thousand Dollars ($10,000.00) to Plaintiff Bladimir Lopez Millan; (5) approving settlement administration costs to Apex Class Action, LLC in the amount of Seven Thousand Four Hundred Ninety Dollars ($7,490.00); (6) approving payment of Fifty Thousand Dollars ($50,000.00) in PAGA penalties, consisting of Thirty-Seven Thousand Five Hundred Dollars ($37,500.00) payable to the California Labor and Workforce Development Agency ("LWDA") and Twelve Thousand Five Hundred Dollars ($12,500.00) payable to Aggrieved Employees; (7) approving attorneys' fees in the amount of Two Hundred Eighty-Eight Thousand Seven Hundred Fifty Dollars ($288,750.00); and (8) approving litigation costs in the amount of $30,543.74.

Dated: July 28, 2026 **JAMES HAWKINS, APLC**

By:________________________
James R. Hawkins
Isandra Y. Fernandez
Anthony Draper
Attorneys for Plaintiff
BLADIMIR LOPEZ MILLAN, individually and on behalf of all others similarly situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Bladimir Lopez Millan ("Plaintiff") seeks final approval of the Class Action and PAGA Settlement Agreement reached with Defendant BOUTON CONSTRUCTION, INC. ("Defendant"). On March 2, 2026, this Court preliminarily approved the Gross Settlement Amount of Eight Hundred Twenty-Five Thousand Dollars ($825,000.00) as fair, adequate, and reasonable. The Court also preliminarily appointed James R. Hawkins, Isandra Fernandez, and Anthony Draper of James Hawkins APLC as Class Counsel and Plaintiff Bladimir Lopez Millan as Class Representative.

For settlement purposes only, the Court further preliminarily certified the Class defined as: All current and former hourly, non-exempt employees employed by Defendant in California during October 19, 2016 to October 27, 2025 ("Class Member(s)"). The Court also preliminarily approved Apex Class Action, LLC ("Apex") as the Administrator.

On April 13, 2026, Apex mailed the Court-approved Notice of Class Action and PAGA Settlement to Class Members. (Tran Decl., ¶ 8.) The deadline for requesting exclusion from or objecting to the Settlement expired on May 28, 2026. An extended response deadline of June 11, 2026, applied only to Class Members who received re-mailed Notices. (Tran Decl., ¶ 11.) As set forth in Plaintiff's Motion for Preliminary Approval, this is a non-reversionary settlement. Subject to final approval, Participating Class Members will automatically receive Individual Class Payments without the need to submit a claim form.

Most importantly, the Settlement and its terms received unanimous support from the Class. Out of 241 Class Members, not a single Class Member requested exclusion from the Settlement and no Class Members objected to the Settlement. (Tran Decl., ¶¶ 12-13.) Accordingly, Plaintiff respectfully requests that the Court grant final approval of the Settlement, approve the requested attorneys' fees and litigation costs, approve the requested Class Representative Service Payment, approve the Administration Expenses Payment, and enter judgment consistent with the terms of the Settlement Agreement.

II. LITIGATION AND SETTLEMENT

A. Pleadings

On October 19, 2020, Plaintiff gave timely written notice to Defendant and the California Labor and Workforce Development Agency ("LWDA") by submitting a Labor Code Private Attorneys General Act ("PAGA") Notice. Also on October 19, 2020, Plaintiff commenced the Action by filing a Class Action Complaint in the Superior Court of California, County of Santa Clara. Thereafter, on February 3, 2021, Plaintiff filed a First Amended Class Action Complaint to add a cause of action pursuant to the PAGA.

The First Amended Class Action Complaint is the operative complaint, which alleges California claims for: (1) failure to pay lawful wages; (2) failure to provide lawful meal periods or compensation in lieu thereof; (3) failure to provide lawful rest periods or compensation in lieu thereof; (4) failure to reimburse business expenses; (5) failure to timely pay wages; (6) knowing and intentional failure to comply with itemized employee wage statement provisions; (7) violation of the unfair competition law, Business and Professions Code sections 17200, et seq.; and (8) civil penalties pursuant to the PAGA. (Draper Decl., ¶¶ 2-4.)

Throughout this litigation, Defendant has denied Plaintiff's allegations and raised defenses to his claims, both individually and on a representative basis. Defendant maintains that its employment policies and practices meet the requirements of the Labor Code and applicable Wage Orders. To date, no class has been certified for litigation purposes, and the Court has not made any findings that Defendant engaged in any wrongdoing or in violation of any state law, rule, or regulation with respect to the issues presented in the litigation. (Draper Decl., ¶¶ 5-6.)

B. Discovery and Mediation

As discussed in the Motion for Preliminary Approval, Class Counsel conducted a thorough investigation into the factual and legal issues implicated by Plaintiff's claims and was able to objectively assess the settlement's reasonableness. Through both formal and informal discovery, Plaintiff and Defendant exchanged extensive documents and information related to the claims asserted. Defendant provided Plaintiff with policy documents, personnel file materials, class data, and random samples of time records and wage reports of putative Class Members. Plaintiff also took the deposition of Defendant's person most knowledgeable and retained and worked with third-party consultants to evaluate class-wide damages. (Draper Decl., ¶ 7.)

The Parties participated in two separate full-day mediations. On December 2, 2024, the Parties participated in a mediation with Daniel Turner, Esq., an experienced wage and hour class action mediator, but were unable to reach a settlement. The Parties continued the litigation and their discussions and subsequently participated in a second private mediation on October 27, 2025, also before Mr. Turner. (Draper Decl., ¶¶ 8-9.)

On or about October 30, 2025, the Parties accepted a mediator's proposal, resulting in a settlement in principle. The Parties thereafter exchanged drafts of the Settlement Agreement and class notice documents, negotiated the final settlement terms, and executed the Settlement Agreement that is now before the Court on December 2, 2025. (Draper Decl., ¶¶ 9-10.)

C. <u>The Preliminarily Approved Settlement</u>

Plaintiff thereafter filed a Motion for Preliminary Approval of Class Action and PAGA Settlement, seeking approval of the Settlement Agreement reached between the Parties. The motion came on for hearing on February 18, 2026, and the Court entered its Order Granting Preliminary Approval of Class Action and PAGA Settlement on March 2, 2026. (Draper Decl., ¶ 11.)

In granting preliminary approval, the Court preliminarily appointed James R. Hawkins, Isandra Fernandez, and Anthony Draper of James Hawkins APLC as Class Counsel; appointed Plaintiff Bladimir Lopez Millan as Class Representative; and approved Apex Class Action, LLC as the Administrator. The Court also approved the form and content of the Notice of Class Action and PAGA Settlement and authorized dissemination of notice to the Class. (Draper Decl., ¶ 11.)

Pursuant to the Settlement Agreement and subject to final approval by the Court, payments will be made from the Gross Settlement Amount of Eight Hundred Twenty-Five Thousand Dollars ($825,000.00) as follows:

1. Subject to Court approval, Class Counsel seek attorneys' fees in the amount of Two Hundred Eighty-Eight Thousand Seven Hundred Fifty Dollars ($288,750.00), together with litigation costs in the amount of $30,543.74, not to exceed Forty Thousand Dollars ($40,000.00). (Settlement Agreement, ¶ 3.2.2.)

2. Subject to Court approval, Plaintiff Bladimir Lopez Millan shall receive a Class Representative Service Payment of Ten Thousand Dollars ($10,000.00). (Settlement Agreement, ¶ 3.2.1.)

3. Subject to Court approval, Apex Class Action, LLC shall receive an Administration Expenses Payment of Seven Thousand Four Hundred Ninety Dollars ($7,490.00). (Settlement Agreement, ¶ 3.2.3.)

4. Subject to Court approval, Fifty Thousand Dollars ($50,000.00) shall be allocated to PAGA penalties, of which Thirty-Seven Thousand Five Hundred Dollars ($37,500.00) shall be paid to the LWDA and Twelve Thousand Five Hundred Dollars ($12,500.00) shall be distributed to Aggrieved Employees. (Settlement Agreement, ¶ 3.2.5.) There are 168 Aggrieved Employees who worked a total of 10,782 pay periods during the PAGA Period, and the average Individual PAGA Payment is estimated at approximately $74.40. (Tran Decl., ¶¶ 18-19.)

5. Individual Class Payments shall be allocated as follows: twenty-five percent (25%) shall be treated as wages subject to applicable tax withholdings and reported on an IRS Form W-2; the remaining seventy-five percent (75%) shall be treated as interest and penalties and reported on an IRS Form 1099. (Settlement Agreement, ¶ 3.2.4.1.)

6. Defendant shall separately pay any and all employer-side payroll taxes owed on the wage portions of the Individual Class Payments. (Settlement Agreement, ¶ 3.1.)

D. Dissemination of Notice Packet

Pursuant to the Court's Order Granting Preliminary Approval, Defendant provided the Class Data to Apex Class Action, LLC ("Apex"), the Court-approved Administrator. (Tran Decl., ¶ 6.)

Apex processed the Class Data, updated addresses through the National Change of

Address ("NCOA") database, and mailed the Court-approved Notice of Class Action and PAGA Settlement in English and Spanish to Class Members on April 13, 2026. (Tran Decl., ¶¶ 6-8.)

A total of 241 Notices were mailed to Class Members. Following the initial mailing, 34 Notices were returned as undeliverable. Apex performed skip traces and re-mailing efforts where appropriate, resulting in the re-mailing of Notices to 19 Class Members. (Tran Decl., ¶¶ 8-9.)

Ultimately, only 15 Notices remained undeliverable, such that approximately 94% of Class Members received the Notice. (Tran Decl., ¶ 10.)

The notice program was completed in accordance with the Preliminary Approval Order and provided the best notice practicable under the circumstances. (Tran Decl., ¶¶ 5-11.)

E. <u>The Settlement Provides Reasonable Compensation to the Class Members</u>

Even without the presumption of fairness and reasonableness, the Settlement is clearly well within the range of reasonableness. All Participating Class Members will be paid their portion of the Net Settlement Amount ("NSA"). Subject to Court approval, the NSA available to pay the Participating Class Members is approximately Four Hundred Thirty-Eight Thousand Two Hundred Sixteen Dollars and Twenty-Six Cents ($438,216.26). (Tran Decl., ¶ 16.) All 241 Class Members are Participating Class Members (100% of the Class) and are to be paid Individual Class Payment amounts. (Tran Decl., ¶ 15.) Participating Class Members will receive an estimated average gross payment of approximately One Thousand Eight Hundred Eighteen Dollars and Thirty-Two Cents ($1,818.32), with the estimated highest gross payment being $6,919.37, and the estimated lowest gross payment being $8.38. (Tran Decl., ¶ 17.) These are favorable amounts especially given the size of the Class and complexities of this case.

The Settlement clearly is within the range of reasonableness as thoroughly discussed in detail in the Motion for Preliminary Approval, and as considered by the Court in granting preliminary approval. As explained at preliminary approval, accounting for the risks of continued litigation, Plaintiff determined that a settlement amounting to Eight Hundred Twenty-Five Thousand Dollars ($825,000.00) was fair, adequate and reasonable as it represents a significant percentage of Defendant's potential exposure. Given Defendant's defenses and all other potential risks of continued litigation, a total recovery for the Class of $825,000.00 which will result in an average award of about $1,818.32 per Participating Class Member, plus additional sums under PAGA, is a meaningful result well within the range of reasonableness and it will provide direct monetary awards to all Class Members without further delay. The specific details of the claims and their valuations addressed in the Motion for Preliminary Approval are set forth in the Declaration of Anthony Draper filed in support of said Motion. (Draper Decl., ¶ 12.)

This is a fair and reasonable recovery far exceeding settlements previously approved by courts. (See, e.g., *In re Warfarin Sodium Antitrust Litigation* (D. Del. 2002) 212 F.R.D. 231, 256–258 [reasonable settlement amount can be 1.6% to 14% of total estimated damages]; *In re Armored Car Antitrust Litigation* (N.D. Ga. 1979) 472 F.Supp. 1357, 1373 [settlements valued at 1% to 8% of estimated total damages approved]; *In re Four Seasons Securities Laws Litigation* (W.D. Okla. 1972) 58 F.R.D. 19, 37 [approving 8% of damages]; *Balderas v. Massage Envy Franchising, LLP* (N.D. Cal., July 21, 2014, No. 12-cv-06327 NC) 2014 U.S.Dist.LEXIS 88804, *5 [settlement amounting to 8% of maximum recovery "fell within the range of possible initial approval based on the strength of plaintiff's case and the risk and expense of continued litigation"]; *In re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1042 [approving settlement of 6% to 8% of estimated damages].)

Through his counsel, Plaintiff took into consideration the significant risks that class certification could be denied on the central claim due to the Brinker decision, and/or that a merits decision on the central claim would not favor the Class. (Draper Decl., ¶ 12.) Plaintiff's counsel also considered the expense and length of continued proceedings necessary to continue the Action against Defendant through trial and any possible appeals and the difficulties in establishing the alleged damages. (Id.) The Settlement is fair, reasonable, and adequate, given the significant risks to Plaintiff and Class Members of prevailing on class certification or at trial, and thus leaving employees with no recovery. (Id.)

III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE

The law favors settlement, particularly in class actions and other complex cases in which substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation. (Class Plaintiffs v. City of Seattle (9th Cir. 1992) 955 F.2d 1268, 1276; *Potter v. Pacific Coast Lumber Company* (1951) 37 Cal.2d 592, 602-603; 4 NEWBERG §11.41.) When faced with a motion for final approval of a class action settlement under Code of Civil Procedure section 382, a court inquires whether the settlement is "fair, adequate, and reasonable." (See e.g., *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 407-408; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801.)

A. <u>This Court Preliminarily Found This Settlement to be Fair, Adequate and Reasonable and Nothing Has Changed to Disturb That</u>

Before granting final approval of a class action settlement, courts must determine that the proposed settlement is fair, reasonable, and adequate—and not a product of fraud, overreaching, or collusion. (Cal. Rules of Court, rule 3.769(g); Code Civ. Proc., § 382; *Dunk v. Ford Motor Co.*, supra, 48 Cal.App.4th at 1801.) Courts must presume that a settlement is fair, reasonable, and adequate, and thus appropriate for final approval when the following three factors are satisfied: (1) the Parties reached settlement via arms-length negotiations; (2) counsel conducted sufficient investigation and discovery to allow themselves and the Court to act intelligently; and (3) counsel is experienced in similar litigation. (*Dunk*, supra, 48 Cal.App.4th at 1802; see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.) Further, as discussed below, although not determinative, courts consider the percentage of objectors in determining whether a presumption of fairness exists. (Id.) There is no question that these factors are satisfied here. The Parties conducted a sufficient amount of discovery, participated in private mediation, and numerous conferences of counsel that ultimately led to an arms-length settlement that provides for substantial recovery. Moreover, out of 241 Class Members, there were no requests for exclusion from, and no objections to, the Settlement. (Tran Decl., ¶¶ 12-13.)

B. The Settlement Resulted From Non-Collusive, Arms-Length Negotiations

There certainly is no collusion between the Parties. As discussed in the Motion for Preliminary Approval and herein, the Parties participated in two separate mediations, both before Daniel Turner, Esq., first on December 2, 2024, and again on October 27, 2025. (Draper Decl., ¶¶ 8-9.) The Parties ultimately accepted a mediator's proposal on or about October 30, 2025, resulting in a settlement in principle. (Draper Decl., ¶ 9.) Armed with all of the relevant information and the help of an experienced mediator, counsel for the Parties engaged in lengthy, serious, and meaningful negotiations which have resulted in the Settlement Agreement. The involvement of a neutral third-party mediator is a factor that favors approval and evidences the presumptive fairness of the arms-length negotiations. Indeed, courts should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring themselves that a settlement agreement represents an arms-length transaction entered without self-dealing or other potential misconduct. (*Kullar v. Foot Locker*, supra, 168 Cal.App.4th at 129.)

C. The Settlement is Supported by Substantial Investigative and Discovery Efforts

As discussed in the preliminary approval papers, supporting declaration and herein, Class Counsel analyzed a significant amount of information that Defendant produced through formal and informal discovery and in preparation for the mediations. (Draper Decl., ¶¶ 7-10.) The Parties have conducted significant investigation of the facts and law during the prosecution of the Action. Class Counsel's research enabled them to pinpoint the relevant issues and claims and to assess potential liability and damages. These efforts resulted in the Parties achieving a resolution on favorable terms, as was evidenced during mediation and negotiations leading to Settlement.

D. Class Counsel is Experienced in Similar Litigation

The endorsement of qualified and well-informed counsel of the settlement as fair is entitled to significant weight. (See *Dunk*, supra, 48 Cal.App.4th at 1802.) As discussed in the preliminary approval papers and set forth in the declaration of Class Counsel, Class Counsel have represented, mediated, and settled other employee class actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the claims against Defendant and the benefits of the proposed settlement under the circumstances of the case. (Draper Decl., ¶¶ 13-23.) Class Counsel contend that the Settlement is fair, adequate, reasonable, and in the best interests of the Class as a whole.

E. Class Members' Positive Reaction to the Settlement Favors Final Approval

Finally, courts look at the reaction of class members to determine if a settlement that directly affects their interests should be approved as fair, adequate, and reasonable. As noted above, out of 241 Class Members, there were no requests for exclusion and no objections. (Tran Decl., ¶¶ 12-13.)

A court may appropriately infer that a class action settlement is fair, adequate, and reasonable even when class members object to it. Indeed, a court may approve a class action settlement as fair, adequate, and reasonable even over the objections of a significant percentage of class members. (See *Boyd v. Bechtel Corp.* (D.C. Cal. 1976) 485 F. Supp. 610, 624; *Reed v. General Motors* (5th Cir. 1983) 703 F.2d 170, 174; *In re Washington Public Power Supply System Securities Litigation* (D. Ariz. 1989) 720 F. Supp. 1379, 1394.) In this case, there were no requests for exclusion from, and no objections to, the Settlement. The Court should construe this as a further indication of Class Members' support for the Settlement as fair, adequate, and reasonable.

IV. CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS REASONABLE

The settlement provides for a Class Representative Service Payment to be paid to the named Plaintiff and Class Representative. The purpose is to provide an additional incentive payment, taking into consideration the risks, time and effort in coming forward to fulfill all the duties associated with being a Class Representative. Awarding incentive awards to compensate named plaintiffs in class actions has been specifically recognized. (See, e.g., *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804 (incentive awards to named plaintiffs appropriate for participation in class action); *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in bringing class case).)

As stated by the Court of Appeal in the *Cellphone Termination Fee Cases*: incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394 (approving an incentive award of $10,000).)

The Class Representative Service Payment is intended to compensate named Plaintiff Bladimir Lopez Millan as Class Representative for his willingness to accept the responsibility of representing the interests of all Class Members. The purpose is to provide an incentive payment, taking into consideration the risks, time, and effort expended by him coming forward to provide invaluable information, spending approximately 40 to 45 hours assisting his attorneys in the litigation of this matter, and litigating this matter on behalf of all Class Members. (See Lopez Millan Decl., ¶¶ 4-5.)

Plaintiff has also given up any personal claim he had or may have had in reaching this Settlement on behalf of the other employees. Plaintiff's release of claims given in this Settlement is much broader and includes a California Civil Code section 1542 waiver, which is not given by any of the other Class Members. (Lopez Millan Decl., ¶ 6; Settlement Agreement, ¶¶ 5.1, 5.1.1.)

Plaintiff also risked potential judgment against him if this case had been unsuccessful. In class action losses, class representatives are deemed the losing party that is liable for the prevailing party's costs. (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1433-1434.) Finally, Plaintiff also risked this lawsuit having a negative impact on future employment opportunities, as prospective employers may be less inclined to hire an employee who has served as a class representative. (Lopez Millan Decl., ¶ 7.) (See, e.g., *Staton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 977.) As such, Plaintiff respectfully requests that this Court approve the Class Representative Service Payment in the amount of **$10,000.00** (a fraction of the Gross Settlement

Amount).

V. CLASS COUNSEL'S REQUEST FOR FEES IS REASONABLE

Subject to Court approval, the Gross Settlement Amount of Eight Hundred Twenty-Five Thousand Dollars ($825,000.00) includes an allocation of up to Two Hundred Eighty-Eight Thousand Seven Hundred Fifty Dollars ($288,750.00) in Class Counsel fees (35% of the Gross Settlement Amount). Plaintiffs and Class Members are entitled to recover their attorneys' fees and costs. (Code Civ. Proc., § 1021.5(a); *Earley*, supra, 79 Cal.App.4th at 1420.) A fee award is justified when class benefits are obtained via settlement. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53.) Fee awards may be based on (1) the percentage-of-the-benefit method; or (2) the lodestar plus multiplier method. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27.) Both methods are proper in California, with courts often only using a lodestar-multiplier method as a check against the reasonableness of a percentage fee award. (See, e.g., *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49 fn. 23; *People ex rel. Dept. of Transportation v. Yuki* (1995) 31 Cal.App.4th 1754, 1769-1772; *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 954.) Regardless of the method used to analyze attorneys' fees, the main inquiry is to determine whether the end result is fair and reasonable. (*Powers v. Eichen* (9th Cir. 2000) 229 F.3d 1249, 1258.)

A. Class Counsel's Requested Fees Are Reasonable Under the Lodestar/Multiplier Analysis

When fees are allocated by percentage method, courts have discretion to "cross-check" the fees awarded through the lodestar method. However, the Supreme Court in *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 505, emphasized that "the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the potential fee award."

In determining the outcome of a fee award in a class action matter, one of the main benchmarks to consider is the result for the Class. The Supreme Court has said that in an award of attorney's fees the "most critical factor is the degree of success obtained." (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 436.) The "benefit obtained for the class" is considered the "foremost" consideration in determining the appropriate fee in a common fund case. (*In re Bluetooth Headset Products Liability Litigation* (9th Cir. 2011) 654 F.3d 935, 942.)

The lodestar-multiplier method begins with a calculation of time spent and reasonable hourly compensation of each attorney and paralegal who worked on the case. Then to compensate counsel for risk, quality, and result, courts commonly apply a multiplier to the lodestar in awarding attorneys' fees. California courts often increase the base lodestar with a multiplier after considering: (1) the continuing obligation of plaintiff's counsel to devote time and effort to the litigation; (2) the extent to which the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee agreement, both from the point of view of eventual success on the merits and securing an award; (4) the experience, reputation, and ability of the attorneys who performed the services, and the skill they displayed in litigation; (5) the amount involved and the results obtained on behalf of the Class by plaintiff's counsel; and (6) the reaction of the Class Members. (See, e.g., *Serrano*, supra, 20 Cal.3d at 49; *Dunk v. Ford Motor Co.*, supra, 48 Cal.App.4th at 1810 fn. 21.) However, no rigid formula applies, and each factor should be considered only "where appropriate." (See *Dept. of Transportation v. Yuki* (1995) 31 Cal.App.4th 1754, 1771; see also *Serrano*, supra, 20 Cal.3d at 49.)

1. <u>Time and Effort</u>

Class Counsel, who are experienced wage and hour class action attorneys, have put a significant number of hours into this case. Class Counsel had to conduct substantial investigation, research numerous issues, review and analyze policies, independently analyze time records and wage reports, as well as dedicate substantial time to analyzing class data. (Draper Decl., ¶ 21.) Those efforts, along with participating in two mediations, negotiating settlement, obtaining preliminary approval, and preparing and filing the final approval papers, required a significant amount of time and labor. (Id.)

The total amount of attorney and staff time expended thus far, and estimated to be expended in finalizing this matter, is approximately 468 hours, and Class Counsel's total lodestar is approximately Two Hundred Ninety-Six Thousand Six Hundred Dollars ($296,600.00). (Draper Decl., ¶ 22.) The fee sought under the Settlement, $288,750.00, is $7,850.00 less than that lodestar, yielding a negative multiplier of approximately 0.97. Class Counsel seek no multiplier or enhancement of any kind.

Class Counsel request no multiplier, which places the fee request well below what California courts routinely allow. Courts have defined reasonable multipliers on a lodestar cross-check to "range from 2 to 4 or even higher." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255.) Courts have also approved multipliers over 9. (See e.g., *Weiss v. Mercedes-Benz of N. Am., Inc.* (D.N.J. 1995) 899 F.Supp. 1297, 1304, aff'd, 66 F.3d 314 (3d Cir. 1995); *Glendora Cmty. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 465, 480-81; *Nat. Gas Anti-Trust Cases I, II, III & IV* (Cal. Super. Ct. Dec. 11, 2006) No. 4221, 2006 WL 5377849, at *4; *Moreno v. Pretium Packaging L.L.C.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB.) Here, the tasks and work performed by Class Counsel were reasonable and necessary to the prosecution of this case and justified, particularly in light of the result achieved. Accordingly, Class Counsel's fee request of Two Hundred Eighty-Eight Thousand Seven Hundred Fifty Dollars ($288,750.00), which entails no multiplier and is $7,850.00 below the lodestar of $296,600.00, is reasonable, fair, and should be approved.

2. <u>Extent Litigation Precluded Other Employment</u>

Inherent to class action litigation is the amount of time and labor required to properly adjudicate the case. From start to settlement, judgment or verdict, class action litigation commands commitment, an extensive amount of time, labor and resources to successfully litigate. Although this litigation did not conclusively preclude other employment, it did impact Class

Counsel's ability to take on other class action cases. Class Counsel work in a boutique law firm with few attorneys and staff. (Draper Decl., ¶ 15.)

3. Contingent Nature of the Agreement

In *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132, the court noted, the economic rationale for contingency cases has been explained as follows: "A contingent fee must be higher than a fee for the same legal services paid as they are performed. As discussed further below, the contingent fee compensates the lawyer not only for the legal services he renders but also 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." (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534, 567.) "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." (Id.) Here, Class Counsel took this matter on a contingent basis. (Draper Decl., ¶ 23.)

4. Experience, Reputation, and Ability of Plaintiff's Counsel

Class Counsel also have considerable experience and have demonstrated competence with litigating wage and hour class actions. (Draper Decl., ¶¶ 13-20.) Class Counsel's skill and experience in litigating wage and hour class actions, in state and federal forums, contributed to the results obtained on behalf of the Class Members. (Id.)

5. Results Obtained on Behalf of the Class by Plaintiff's Counsel

The award of attorney fees should reflect the successful outcome of the case. (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 440.) As already discussed herein and in the Motion for Preliminary Approval, this case involves numerous and difficult issues largely precluding a clear-cut outcome as to liability. There also were significant class certification issues stemming from questions concerning whether individual issues predominate and whether representative evidence, declarations, and statistical sampling could support certification. Defendant recognized the uncertainty of Plaintiff's claims and vigorously disputed liability and the amount of damages.

Nevertheless, despite the obstacles as already discussed in the Motion for Preliminary Approval and herein, Class Counsel obtained favorable financial compensation for the Class Members. Not a single Class Member requested exclusion from the Settlement. Thus, all 241 Participating Class Members are to be paid Individual Class Payments out of the Net Settlement Amount. (Tran Decl., ¶ 15.) Participating Class Members will receive an estimated average gross payment of approximately $1,818.32, with the estimated highest gross payment being $6,919.37, and the estimated lowest gross payment being $8.38. (Tran Decl., ¶ 17.) These are favorable amounts especially given the size of the Class and potential hurdles to recovery. (Draper Decl., ¶ 12.)

Despite the complexity and hurdles of the case, Class Counsel have, through the investment of substantial effort and the resources of their boutique law firm, been able to secure a favorable Settlement on behalf of the Class Members.

6. <u>Reaction of Putative Class Members</u>

As already discussed herein, the reaction of the Class Members has been positive. Specifically, there were no objections to Class Counsel's request for attorneys' fees and no requests for exclusion, which also provides compelling evidence that the request is fair, adequate, and reasonable.

In sum, based on the six factors discussed above, Class Counsel's requested fee is reasonable without any enhancement of the lodestar whatsoever. Additionally, by settling this case prior to trial rather than continuing to litigate issues that remain somewhat unsettled, counsel obtained exceptional results for the Class at far less expense to the Parties, counsel, and this Court. Accordingly, a fee request that applies no multiplier at all to Class Counsel's lodestar is plainly warranted. "Considering that our Supreme Court has placed an extraordinarily high value on settlement, it would seem counsel should be rewarded, not punished, for helping to achieve that goal." (*Lealao*, supra, 82 Cal.App.4th at 52.) Multipliers of two to four are commonplace in California class actions and can range even higher. (*Wershba*, supra, 91 Cal.App.4th at 255; *In re California Indirect Purchases* (Oct. 22, 1998) WL 1031494 at *10, fn. 5.) Again, in this case, as noted above, Class Counsel seek no multiplier, and the fee request is correspondingly conservative.

B. Class Counsel's Requested Fees Are Reasonable Under the Percentage of the Benefit Method

1. Attorneys' Fees Should be Based Upon the Total Benefit to the Class

Under California law, courts have the discretion to award fees under the percentage method when fees are drawn from an ascertainable fund. (See *Laffitte v. Robert Half Int'l* (2016) 1 Cal.5th 480, 503 ("Laffitte II") ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created."). The common fund method "better approximates the workings of the marketplace than the lodestar approach" in setting the price of contingent fees. (See *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 48 ("Lealao"). The percentage method "provide[s] incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace." (Id.)

The primary benefit of the percentage method is that it focuses on the benefit conferred on the class as a result of the efforts of Class Counsel. Awarding Class Counsel fees based on a percentage of the recovery has the advantages of eliminating the incentive for attorneys to increase hours unnecessarily, encouraging early settlement of disputes, and preserving judicial resources otherwise used to monitor attorneys' billable hours. (See *In re Activision Sec. Litig.* (N.D. Cal. 1989) 723 F.Supp. 1373, 1378-79; *Manual for Complex Litigation* (4th ed. 2004) § 14.121 ("in practice, the lodestar method is difficult to apply, time consuming to administer, inconsistent in result... capable of manipulation... [and] creates inherent incentive to prolong the litigation"); see also *In re Quantum Health Resources, Inc.* (C.D. Cal. 1997) 962 F.Supp. 1254, 1256 (noting that lodestar "creates an incentive to keep litigation going in order to maximize the number of hours included in the court's lodestar calculation").)

The percentage of the fund method survives in California class action cases. (*Laffitte v. Robert Half Intern., Inc.* (2016) 1 Cal.5th 480, 506; see also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 65-66; *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387, 397 [the common fund doctrine is "frequently applied in class actions when the efforts of the attorney for the named class representatives produce monetary benefits for the entire class"]; *Wershba v. Apple Computer, Inc.*, supra, 91 Cal.App.4th at 254.)

2. The Contingent Nature of Class Counsel's Representation Supports the Requested Fees Based on a Percentage of the Percentage of the Gross Settlement Amount

Further, the contingent nature of Class Counsel's representation also warrants the requested attorney fees based on the percentage of the Gross Settlement Amount. The risks in taking on any class action are enormous especially in regard to wage-and-hour class actions because the wage laws are still developing and a change in the law could wipe out a plaintiff's recovery. Litigating a class action through trial takes years and requires the investment of hundreds of thousands of dollars. Attorneys willing to undertake this risk deserve appropriate compensation. As elaborated by the California Supreme Court in *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579-580, counsel should be awarded a fee enhancer for taking on contingent cases because a "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."

As the California Supreme Court specifically 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. *Id.* at 580. *(citing Ketchum v. Moses*, (2001*)* 24 Cal. 4th 1122, 1132-33).

In the legal marketplace, an attorney whose compensation is entirely dependent on success—who takes a significant risk—should and does expect a significantly higher fee than an attorney who is paid a market rate as the case goes along, win or lose. (See, e.g., *Rader v. Thrasher* (1962) 57 Cal.2d 244, 253 ("'[a] contingent fee contract, since it involves a gamble on the result, may properly provide for a larger compensation than would otherwise be reasonable'" (citation omitted)); *Salton Bay Marina v. Imperial Irrig. Dist.* (1985) 172 Cal.App.3d 914, 955 (contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee award).)

Class Counsel represented the Class Members in this matter and have borne the entire risk and cost of litigation on a pure contingency basis. To date, Class Counsel have not received any compensation and yet have expended litigation costs on behalf of the Class. Class action contingency cases are inherently risky. Upon retention, Class Counsel make a commitment to litigate the case through trial. These types of cases can take years, hundreds of hours of work and cost an enormous amount of money; these risks are known upon retention. The risks involved coupled with the contingency basis of this case further support Class Counsel's request for attorneys' fees and costs. (Draper Decl., ¶ 23.)

3. Additional Factors Regarding Contingency Market Rate Justify the Requested Fee Award

Further, important public policies underlie a court's determination of a motion for attorneys' fees in class actions. Employees who are wronged by an employer's violation of state and federal labor laws should have access to counsel with the ability and resources necessary to litigate complex cases. (See e.g., *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340 (enforcement of labor laws and class action device are both matters of public policy).) Our legal system places unique reliance on private litigants to enforce substantive provisions of employment law through class actions. (See, e.g., *Gentry v. Superior Court* (2007) 42 Cal.4th 443, 450-56 (confirming the public importance of private enforcement of overtime laws through class actions); *Lealao*, 82 Cal.App.4th at 48 (legal system relies on private litigants to enforce substantive provisions of law through class and derivative actions; attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace).)

As the California Court of Appeal recognized in *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 839: “Adequate fee awards are perhaps the most effective means of achieving [the] salutary goal [of encouraging private attorney general actions and] [c]ourts should not be indifferent to the realities of the legal marketplace or unduly parsimonious in the calculation of such fees.”

(See also *Lealao*, 82 Cal.App.4th at 53 (cautioning against fee awards that are too small and therefore "chill the private enforcement essential to vindication of many rights..."). At a minimum, attorneys providing these substantial benefits should be paid an award equal to the amount negotiated in private bargaining that take place in the legal marketplace. (*Deposit Guaranty Nat. Bank, Jackson, Miss. v. Roper* (1980) 445 U.S. 326, 338; *Lealao*, 82 Cal.App.4th at 49-50.)

4. <u>Counsel’s Requested Fee Award is Within California’s Benchmark Awards and Thus Reasonable</u>

In addition to the foregoing, Class Counsel’s request for attorneys’ fees in the amount of up to Two Hundred Eighty-Eight Thousand Seven Hundred Fifty Dollars ($288,750.00), or not more than thirty-five percent (35%) of the Eight Hundred Twenty-Five Thousand Dollar ($825,000.00) Gross Settlement Amount, is within the "zone of reasonableness." The fee amount presently sought is not extraordinary but actually falls at the "average" fee deemed reasonable under California state court authority, as it is recognized that "courts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million." (See, e.g., *Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a $16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a $3.75 million wage and hour class action settlement).)

Moreover, the percentage should be measured against the full fund established by the settlement and not upon the total value of the net settlement fund. (*Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027.) This method recognizes that the efforts of class counsel established the entire settlement, including non-monetary benefits, for the benefit of the class. (Id.) In the Ninth Circuit's decision in *Williams*, the parties settled class action claims in favor of the class for a total settlement fund of $4.5 million, and the district court awarded class counsel attorneys' fees based upon the class members' claims against that fund. (*Williams*, 129 F.3d at 1027.) The class counsel in *Williams* contended that the district court erred and should have calculated their fee as one-third of the entire $4.5 million settlement fund. (Id.) The Ninth Circuit agreed with class counsel and determined that the district court's award of a fee based solely upon the claims against the settlement fund was an abuse of its discretion.

Ninth Circuit courts have applied *Williams* in a variety of contexts, including claims-made settlements without a minimum or maximum recovery. (See, e.g., *Browning v. Yahoo! Inc.* (N.D. Cal. Nov. 16, 2007) WL 4105971 at *13-14; *Young v. Polo Retail* (N.D. Cal. Mar. 28, 2007) WL 951821 at *14-24; *Lopez v. Youngblood* (E.D. Cal. Sept. 1, 2011) WL 10483569 at *32-43; *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 WL 928133 at *11; *Glass v. UBS Financial Services* (N.D. Cal. Jan. 26, 2007) WL 221862 at *16.) In sum, Class Counsel's request for an award of attorneys' fees is reasonable.

VI. CLASS COUNSEL'S REQUESTED COSTS ARE REASONABLE

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include the expenses necessarily incurred as a result of the litigation because those who benefit from counsel's effort should share in the cost. *See Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 fn. 6. The appropriate analysis to determine whether costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace, such as costs for consultants, copying, postage, long distance charges, travel expenses, filing fees, mediation fees, and investigation fees. *See Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19-20; *see also Hartless v. Clorox Co.* (S.D. Cal. 2011) 273 F.R.D. 630, 641.

Here, the Settlement provides for repayment of Class Counsel's actual and reasonable costs of litigation in an amount not to exceed Forty Thousand Dollars ($40,000.00). Class Counsel incurred reasonable litigation costs in bringing this matter to a resolution before trial. The total costs incurred and to be incurred by Class Counsel in this litigation are $30,543.74, which is less than the maximum Forty Thousand Dollars ($40,000.00) litigation cost amount set forth in the Settlement Agreement. (Draper Decl., ¶ 24.)

VII. <u>THE SETTLEMENT ADMINISTRATOR'S FEES ARE REASONABLE</u>

Apex Class Action, LLC was retained to administer the notice and settlement process. Apex's duties included, but were not limited to: (a) printing and mailing the Court-Approved Notice of Class Action and PAGA Settlement; (b) receiving undeliverable Notices; (c) receiving any requests for exclusion; (d) receiving objections; and (e) answering questions from Class Members. Should the Court grant final approval of this Settlement, Apex will be responsible for further duties, including but not limited to: (f) calculating Individual Class Payment amounts; (g) calculating Individual PAGA Payments; (h) distributing settlement funds; (i) tax reporting following final approval; (j) mailing settlement checks; and (k) performing such other tasks as the Parties mutually agree or the Court orders Apex to perform. (Tran Decl., ¶ 3.)

Thus, Plaintiff respectfully requests that Apex Class Action, LLC be awarded Administration Expenses in the amount of Seven Thousand Four Hundred Ninety Dollars

($7,490.00), pursuant to the Settlement Agreement. (Settlement Agreement, ¶ 3.2.3; Tran Decl., ¶ 20.)

VIII. CONCLUSION

The Parties have negotiated a fair Settlement of the wage and hour claims that likely would not have been brought, let alone successfully resolved, but for the effort and resolve of Plaintiff and his counsel. The Class Members' positive response indicates that the Settlement is fair and reasonable. Accordingly, Plaintiff respectfully requests that this Court grant final approval of the Settlement Agreement and enter judgment.

Respectfully submitted,

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Dated: July 28, 2026

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