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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

MARIA WONG-MIKHAIL on behalf of herself and all others similarly situated,

Plaintiff,

vs.

SUTTER BAY MEDICAL FOUNDATION, doing business as SUTTER HEALTH, a California corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 21CV378378
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 Draper and Stacey Shim concurrently filed herewith]

Date: March 25, 2026
Time: 1:30 p.m.
Dept.: 19

PLEASE TAKE NOTICE THAT on March 25, 2026, in Department 19 of the above-entitled court located at 191 N. First Street, San Jose, California 95113, Maria Wong-Mikhail ("Plaintiff") will and hereby does move the Court for an Order: (1) granting final approval of the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement Agreement"); 2) approving the maximum settlement amount of Six Million Dollars ($6,000,000); (3) approving all settlement payments to Participating Class Members; (4) allocating Class Representative's

Service Award of Ten Thousand Dollars ($10,000) to Plaintiff Maria Wong-Mikhail; (5) approving costs of administering the Settlement to the Settlement Administrator, Apex Class Action, LLC in the amount of Fifty- Seven Thousand Dollars ($57,000); (6) approving One Hundred Fifty Thousand Dollars ($150,000) in PAGA penalties, (7) approving payment of Two Million Dollars ($2,000,000) in attorneys' fees and total attorneys' cost of Sixteen Thousand Four Hundred Seventy-Seven Dollars and Sixty-Two Cents ($16,477.62).

This unopposed motion is made pursuant to California Rules of Court Rule 3.769, which requires court approval of the settlement of a putative class action. Further, this Motion will be based on the following: (i)Memorandum of Points and Authorities; (ii) the concurrently filed declarations of Anthony Draper and Stacey Shim; (iii) the Class Representative declaration filed in support of motion for preliminary approval of the settlement; (iv) Settlement Agreement attached as Exhibit 1 to the Declaration of Anthony Draper; (v) upon the oral arguments of counsel (should there be any) and; (vi) upon the complete records and file of this matter.

Dated: March 4, 2026

JAMES R. HAWKINS, APLC

By: Isandra Fernandez

James R. Hawkins
Isandra Y. Fernandez
Anthony Draper
Attorneys for Plaintiff
Maria Wong-Mikhail

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Maria Wong-Mikhail ("Plaintiff") seeks final approval of the class action settlement agreement reached with Defendant Sutter Bay Medical Foundation, (hereinafter "Defendant" and/or "Sutter Bay"). On November 6, 2025 this Court preliminarily approved the settlement amount of Six Million Dollars ($6,000,000) as being fair, adequate, and reasonable. Further, this Court preliminarily appointed Plaintiffs' counsel, James Hawkins, Isandra Fernandez, and Anthony Draper of James Hawkins APLC as Class Counsel, the named Plaintiff Maria Wong-Mikhail as Class Representative.

The Court also preliminarily certified the Classes defined as: means all current and former non-exempt employees employed by Defendant, Sutter Bay Medical Foundation, at any time from March 18, 2017 through August 11, 2024 ("the Class Period"). The Court also preliminarily approved Apex Class Action, LLC ("Apex") as the Settlement Administrator.

On January 9, 2026, the Parties notified the Class Members about the settlement through the Settlement Administrator, Apex (Declaration of Stacey Shim from Apex. ("Shim Decl." ¶ 7.) The deadline for requests for exclusions from and objections to the Settlement expired February 23, 2026, forty-five (45) days after the mailing (Shim Decl., ¶¶ 10-12.) As previously set forth in Plaintiff's Motion for Preliminary Approval ("Preliminary Approval Motion"), this is a cash settlement with no reversionary aspect. Every Class Member who has not opted out of the Settlement will automatically be mailed an individual settlement payment.

Most importantly, the Settlement and all its terms received overwhelming support from the Class Members. Specifically, out of the fifteen thousand, nine-hundred and thirty-one (15,931) class members there were only four (4) requests for exclusion and no objections to the Settlement. (Shim Decl., ¶¶ 7,10.) Therefore, Plaintiff respectfully requests the Court grant final approval of the Settlement, Class Counsel's requested Attorney Fees and Costs amounts, Class Representative's Service Award payment and the Settlement Administrator Costs payment in the amounts preliminarily approved by the Court and as fully disclosed to Class Members.

II. LITIGATION AND SETTLEMENT

A. Pleadings

On January 21, 2021, Plaintiff Maria Wong-Mikhail provided timely written notice to Defendant and the Labor Workforce Development Agency ("LWDA") of her intention to either file a PAGA complaint or amend an existing complaint to include a PAGA claim. (See Declaration of Anthony Draper in Support of Motion for Final Approval of Class Action and PAGA Settlement ("Draper Decl.") ¶ 2.) On March 18, 2021, Plaintiff filed this wage and hour class action Complaint in this Action in Santa Clara County Superior Court. (Draper Decl., ¶ 3.) Thereafter, on March 29, 2021, Plaintiff filed a First Amended Complaint, which added a fifth cause of action for civil penalties under the PAGA (Labor Code §§ 2698, *et seq*.). (Draper Decl., ¶ 4.) The First Amended Complaint is the operative complaint, which alleges California claims for (1) failure to pay lawful wages; (2) failure to timely pay wages; (3) knowing and intentional failure to comply with itemized employee wage statement provisions; (4) violation of the Unfair Competition Law; and (5) PAGA.(*Id*.)

Throughout this litigation, Defendant has denied Plaintiff's allegations, denies any failure to comply with the laws identified in the First Amended Complaint, denies any and all liability for the causes of action that are or reasonably could have been alleged based on the facts in the First Amended Complaint, and denies the case is manageable or amenable to class treatment and raised defenses to her claims, both individually and on a representative basis. (Draper Decl., ¶ 5.) Defendant maintains that its employment policies and practices meet the requirements of the Labor Code and applicable Wage Orders (*Id*.) To date, no class has been certified 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., ¶ 6.)

B. Discovery and Mediation

As discussed in the Preliminary Approval motion, 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. (Draper Decl., ¶ 7.) Through both formal and informal discovery, Plaintiff and Defendant have exchanged extensive documents and information related to the claims asserted (*Id*.) Defendant also provided Plaintiff with class data and random samples of time records, wage statements, and information regarding the number of non-exempt employees during the relevant time-period. Plaintiff also utilized an expert for a detailed review of the timekeeping and payroll data provided (*Id*.).

On December 3, 2024, after conducting formal and informal discovery, exchanging relevant information, and engaging in numerous discussions regarding the claims alleged, the Parties participated in a full-day mediation before Lisa Klerman, an experienced wage and hour class action mediator. (Draper Decl., ¶ 8.) At the conclusion of the mediation, the mediator memorialized the terms of a proposed settlement in a Mediator's Proposal, which the Parties subsequently accepted (Draper Decl., ¶ 9.) Thereafter, the Parties exchanged multiple drafts of the proposed settlement agreement and class notice documents and engaged in numerous communications regarding the settlement terms (*Id*.) The final terms and provisions of the settlement agreement were approved and executed by all the parties on or about April 11, 2025 (Draper Decl., ¶ 10.)

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

On August 25, 2025, Plaintiff filed the Preliminary Approval Motion. On September 17, 2025, as per the Court's tentative ruling, the Parties filed an Amendment to the Settlement Agreement designating a *cy pres* to receive any uncashed funds pursuant to CCP §384. (Draper Decl., ¶ 11; Exh. 1- Settlement Agreement and Amendment thereto ("Settlement Agreement").

On November 6, 2025, the Court entered the Order granting preliminary approval of the Settlement Agreement (and preliminarily appointed Class Counsel (James Hawkins, Isandra Fernandez, and Anthony Draper of James Hawkins APLC, the Class Representative (Maria Wong-Mikhail), and approved the Settlement Administrator (Apex). The Court also approved the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Approval ("Class Notice") Now that administration has been completed, subject to the Court's final approval, the fees and expenses will be paid from the Maximum Settlement Amount

("MSA") of $6,000,000 as follows:

1. Subject to Court approval, Class Counsel may seek approval from the Court of a maximum of Two Million Dollars ($2,000,000), in attorneys' fees (one-third of the Settlement Amount), and litigation costs of Sixteen Thousand Four Hundred Seventy-Seven Dollars and Sixty-Two Cents ($16,477.62) (Settlement Agreement, ¶11.)

2. Subject to Court approval, the named Plaintiff and Class Representative will be paid a Service Award payment of Ten Thousand Dollars ($10,000) from the Settlement Amount for a general release of her claims and for serving as a Class Representative. (Settlement Agreement, ¶ 12.)

3. Subject to Court approval, the Settlement Administrator, Apex, will be paid Fifty-Seven Thousand Dollars ($57,000) from the Settlement Amount. (Settlement Agreement, ¶ 13.)

4. Subject to Court approval, One Hundred Fifty Thousand Dollars ($150,000) shall be allocated to PAGA penalties, from which One Hundred Twelve Thousand Five Hundred Dollars ($112,500) (75%) shall be payable to the LWDA, representing the LWDA's share of PAGA penalties ("PAGA Allocation") and Thirty-Seven Thousand Five Hundred Dollars ($37,500) (25%) to the PAGA Eligible Employees, whether or not they opt out of the Class Settlement. (Settlement Agreement, ¶ 14.)

5. Individual Class Payments shall be allocated as follows: 20% to alleged unpaid wages, subject to withholding and reported on a W-2 form, and 80% to non-wage compensation which shall be reported on an IRS 1099 without withholdings (Settlement Agreement, ¶ 17.)

6. Defendant shall be responsible for paying the employer's share of payroll taxes, separately and in addition to the maximum settlement amount. (Settlement Agreement, ¶ 18.)

D. <u>Dissemination of Notice Packet</u>

On December 3, 2025, Defendant's counsel provided Apex with the Class Data file, for 15,931 individuals containing the names, social security numbers, last known mailing addresses and the total number of relevant workweeks worked by each Settlement Class Member. (Shim Decl., 5.) The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database ("NCOA"). (Shim Decl., ¶ 6.) On January 9, 2026, the Class Notice was mailed to all 15,931 Class Members. (Shim Decl., ¶ 7.) A total of 564 Class Notices were returned by the post office. Apex performed an advanced address search (i.e. skip trace) through which it was able to locate 491 updated addresses and Apex mailed a Class Notice to those updated addresses. (Shim Decl., ¶ 8.) Ultimately 73 Class Notices were deemed undeliverable. (Shim Decl., ¶ 9.)

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 $3,783,000. (Shim Decl., ¶ 14.) A total of 15,927 Participating Class Members (99.97% of the total 15,931 Settlement Class Members) are to be paid Individual Class Payment amounts. (Shim Decl., ¶ 13.). Participating Class Members will receive an estimated average gross payment of $237.52, with the estimated highest gross payment being $609.94, and the estimated lowest gross payment being $1.58. (Shim Decl., ¶ 15.) 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 $6,000,000 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 $6,000,000 which will result in average award of about $237.52 per 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 Preliminary Approval Motion are set forth in the Declaration of Anthony Draper filed in support of said Motion. (Draper Decl. ¶ 11.)

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].)[1]

Through her counsel, Plaintiff took into consideration the significant risks that class certification could be denied on the central claim, 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.

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[1] *See also In re Uber FCRA Litig*., No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys' fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc*., No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing "8.1% of the full verdict value" with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc*., No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc*., No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys' fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where "[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney's fees and costs.").

(*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. (*City of Seattle* 955 F.2d at 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* §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, 129-30; *Dunk v. Ford Motor Company* ,(1996) 48 Cal.App.4th 1794, 1801.)

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

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. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 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 (*Id.* 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 15,931 Class Members there were 4 requests for exclusion from, and 0 objections to, the Settlement. (Shim Decl., ¶¶ 10,11.)

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

There certainly is no collusion between the Parties. As discussed in the Preliminary Approval Motion and herein, the Parties participated in a full day mediations with Lisa Klerman. (Draper Decl., ¶ 8.) Armed with all of the relevant information and the help of a highly 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., ¶ ¶ 7.8.) 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., ¶¶ 13-19.) Class Counsel contends 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 15,931 Class Members, there were 4 requests for exclusion and 0 objections. (Shim Decl., ¶¶ 10,11,13.)

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. Betchel Corp.* (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v. General Motors,* (5th Cir. 1983) 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.,* (D. Ariz. 1989) 720 F. Supp. 1379, 1394.) In this case, there were 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 Class Representative Service Award 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 Case*, (2010) 186 Cal. App. 4th 1380, 1394 (approving an incentive award of $10,000).

The Class Representative Service Award is intended to compensate named Plaintiff Maria Wong-Mikhail as Class Representative for her 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 her coming forward to provide invaluable information and to litigate this matter on behalf of all Class Members.(See Declaration of Maria Wong Mikhail filed in Support of Preliminary Approval ("Wong-Mikhail Decl.") ¶¶ 4, 5.)

Plaintiff has also given up ***<u>any</u>*** personal claim she had or may have had in reaching this Settlement on behalf of the other employees. The Plaintiff's release of claims given in this Settlement is ***<u>much broader</u>*** and includes a California Code of Civil Procedure 1542 waiver, which is ***<u>not</u>*** given by any of the other class members. (Wong-Mikhail Decl., ¶ 6.)

Plaintiff also risked potential judgment against her 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. (Wong-Mikhail 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 Award in the amounts of $10,000 (a fraction of the MSA).

V. CLASS COUNELS' REQUEST FOR FEES IS REASONABLE

Subject to court approval, the settlement amount of $6,000,000 includes an allocation of $2,000,000 (1/3 of the MSA) in Class Counsel Fees. Plaintiffs and class members are entitled to recover their attorneys' fees and costs. (Code Civ. Proc. § 1021.5(a); *Earley*, 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 Cty. for Indep. 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. (*See 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* (*Serano III*) (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 Counsels' 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 Internat. Inc.* (2016) 1 Cal. 5th 480, 505, "emphasize[d] [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 n.21.) However, no rigid formula applies, and each factor should be considered only "where appropriate." (*See Dept. of Transp. 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 in this case. Class Counsel had to conduct substantial investigation, research numerous issues, review and analyze policies, independently analyze time records, and wage statements, as well as dedicate substantial time to analyze data, time records and payroll records. (Draper Decl., ¶ 21.) Those efforts, along with negotiating settlement, obtaining preliminary approval, preparing and filing the final approval papers, required a significant amount of time and labor (*Id.*)

The total amount of attorney time estimated to have been expended thus far, and estimated to be expended in finalizing this matter is 501.7 and Class Counsel's total lodestar is $394,319 with an estimated multiplier of 5.07. (Draper Decl., ¶ 22.)

Similar multipliers have been found to be reasonable. 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 a multiplier over 9. (*See* e.g.,*Weiss v. Mercedes-Benz of N. Am., Inc*., 899 F. Supp. 1297, 1304 (D.N.J. 1995) (9.3 multiplier), *aff'd*, 66 F.3d 314 (3d Cir. 1995) ; *Glendora Cmty. Redev. Agency v. Demeter* (1984) 155 Cal. App. 3d 465, 480-81 (affirming multiplier of 12); *Nat. Gas Anti-Trust Cases I, II, III & IV* (Cal. Super. Ct. Dec. 11, 2006) No. 4221, 2006 WL 5377849, at *4 ("numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding fees."); *Moreno v. Pretium Packaging L.L.C.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB, 2021 (affirming 2.57 multiplier as reasonable "in light of the contingent nature of recovery, the complexity of the issues, and the result obtained"). 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 requested multiplier of 5.07 and fee request of $2,000,000 is reasonable, fair, and should be awarded.

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 Counsels' 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. <u>Contingent Nature of the Agreement</u>

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 the matter on a contingent basis. (Draper Decl., ¶ 24.)

4. <u>Experience, Reputation, and Ability of Plaintiffs' Counsel</u>

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

5. <u>Results Obtained on Behalf of the Class by Plaintiffs' Counsel</u>

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 preliminary approval motion, 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 the fact concerning whether individual issues predominate and whether class member declarations and statistical samplings can 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 preliminary approval motion and herein, Class Counsel obtained favorable financial compensation for the class members. Only 4 of the Class Members opted out of the Settlement. Thus, all 15,931 Participating Class Members are to be paid Individual Class Payments out of the NSA. (Shim Decl., ¶¶ 10,13.) Participating Class Members will receive an estimated average gross payment of $237.52, with the estimated highest gross payment being $609.94, and the estimated lowest gross payment being $1.58. (Shim Decl., ¶ 15.) 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. Reaction of Putative Class Members

As already discussed herein, the reaction of the Class Members has been positive. Specifically, not one of the Class Members objected to Class Counsel's request for attorneys' fees there were only 4 requested exclusions 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 lodestar in this action should be enhanced by the application of a multiplier of 5.07. 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, the counsel and to this Court. Accordingly, a positive multiplier of Class Counsels' lodestar is further 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* (October 22, 1998) WL1031494 at * 10, fn 5.) Again, in this case, as noted above, a multiplier is both necessary and appropriate.

B. Class Counsels' 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. §14.121 (2004) ("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 Ca. 5th 480, 506; *see also Chavez v. Netflix, Inc*. (2008) 162 Cal. App. 4th 43 at 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. <u>The Contingent Nature of Class Counsels' Representation Supports the Requested Fees Based on a Percentage of the GSA</u>

Further, the contingent nature of Class Counsels' 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. Daimler Chrysler Corp.* (2008) 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 has borne the entire risk and costs of litigation on a pure contingency basis. To date, Class Counsel has not received any compensation and yet has expended litigation costs on behalf of the class. Class action contingency cases are inherently risky. Upon retention, Class Counsel makes 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., ¶ 24.)

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 Ca1. 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, 450-6 (confirming the public importance of private enforcement of overtime laws through class actions); *Lealao*, 82 Cal. App. 4th (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*, 92 Cal. App. 4th 823, 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. Counsels' Requested Fee Award is Within California's Benchmark Awards and Thus Reasonable

In addition to the foregoing, Class Counsel's request for attorneys' fees in the amount of $2,000,000 or not more than 1/3 of the $6,000,000 MSA 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 (claims-made settlement with no minimum or maximum recovery); *Young v. Polo Retail,* (N.D. Cal. Mar. 28, 2007) WL 951821 at*14-24 (same); *Lopez v. Youngblood* (E.D. Cal. Sept. 1, 2011) WL 10483569 at *32–43 (reversionary common fund with maximum recovery only). *Hopson v. Hanesbrands Inc*. (N.D. Cal. Apr. 3, 2009) 09 WL 928133 at *11; *Glass v. UBS Financial Services*, (N.D. Cal. Jan. 26, 2007) WL 221862 at *16) (same). In sum, Class Counsels' request for an award of attorney's fees is reasonable.

VI. CLASS COUNSELS' 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. Cty. of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). 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*, 24 F.3d 16, 19-20 (9th Cir. 1994); *see also Hartless v. Clorox Co.*, 273 F.R.D. 630, 641 (S.D. Cal. 2011).

Here, the Settlement provides for repayment of Class Counsels' actual and reasonable costs of litigation in an amount not to exceed $20,000. 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 $16,477.62 which is less than the maximum $20,000 litigation cost amount set forth in the Settlement Agreement. (Draper Decl., ¶ 25; Ex. 3.)

VII. THE SETTLEMENT ADMINISTRATOR'S FEES ARE REASONABLE

Apex 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 Class Notice; (b) receiving undeliverable Notices; (c) receiving any requests for exclusion; (d) 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: (e) calculating Individual Class Payment amounts, (f) calculating Individual PAGA Payments, (g) distributing funds, (h) tax-reporting following final approval; (i) mailing Settlement checks; (j) and for such other tasks as the Parties mutually agree or the Court orders Apex to perform. (Shim Decl., ¶ 3.) Thus, Plaintiff respectfully requests that Apex be awarded costs in the amount of $57,000 as per the Settlement Agreement. (Settlement Agreement, ¶ 13.) (Shim Decl. ¶ 18.)

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 the Plaintiff and her 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,

JAMES HAWKINS APLC

Dated: March 4, 2026

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