

HEATHER DAVIS, SBN 239372
heather@protectionlawgroup.com
AMIR NAYEBDADASH, SBN 232204
amir@protectionlawgroup.com
BRENDAN J. BURTON, SBN 323495
brendan@protectionlawgroup.com
SHADI SAHEBGHALAM, SBN 343043
shadi@protectionlawgroup.com
PROTECTION LAW GROUP, LLP
149 Sheldon Street
El Segundo, California 90245
Tel.: (424) 290-3095 / Fax: (866) 264-7880

Attorneys for Plaintiff
HECTOR ALMAZAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET

HECTOR ALMAZAN, individually, and on
behalf of others similarly situated and as an
aggrieved employee and Private Attorney
General;

Plaintiff,

vs.

HATHAWAY-SYCAMORES CHILD AND
FAMILY SERVICES, a California non-
profit corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 21STCV12008

*Assigned for All Purposes to: Hon. Elihu M.
Berle, Dept. 6*

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES THEREOF**

Date: May 29, 2025

Time: 9:00 A.M.

Dept: 6

Complaint Filed: March 29, 2021

Trial Date: None Set

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on Maay 29, 2025, at 9:00 a.m., or as soon thereafter as
3 this matter may be heard, in Department 6 of the above-entitled Court, located at 312 North Spring
4 Street, Los Angeles, California 90012, named Plaintiff HECTOR ALMAZAN (“Plaintiff”) will
5 apply to this Court for an order granting final approval of the proposed Class Action and PAGA
6 Settlement Agreement (“Settlement” or “Settlement Agreement”) between Plaintiff and
7 Defendants HATHAWAY-SYCAMORES CHILD AND FAMILY SERVICES (“Defendant”).
8 As part of that approval, Plaintiffs will request that the Court:

9 1. Grant final approval of the Settlement attached to the Declaration of Heather
10 Davis, Esq., on the grounds that the proposed settlement is fair, adequate, and reasonable because:

- 11 a. The non-reversionary Net Settlement Amount of \$229,111.62 will be paid out to
12 the Participating Class Members;
13 b. Proper Notice is being provided to all Class Members pursuant to the terms of the
14 Settlement;
15 c. Proper Notice of the Settlement was provided to the California Labor and
16 Workforce Development Agency (“LWDA”) in accord with Labor Code 2699 *et.*
17 *seq.*;
18 d. As of the filing of this motion, there have been no objections to the Settlement or
19 disputes filed; and
20 e. As of the filing of this motion, four (4) Class Members have requested to be
21 excluded from the Settlement, leaving 886 Participating Class Members;

22 2. Award attorneys’ fees in the amount of \$175,489.79 (35% of the Gross Settlement
23 Amount) to Protection Law Group, LLP (“Class Counsel”);

24 3. Award costs in the amount of \$25,297.99 to Class Counsel for actual litigation
25 costs and expenses incurred;

26 4. Award payment of \$14,000.00 to the Settlement Administrator, Apex Class Action
27 Administration, for the costs of Settlement Administration;

28 5. Award a Class Representative Service Payment of \$7,500.00 to Plaintiff;

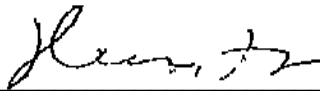
1 6. Approve payment of \$50,000.00 for penalties pursuant to the California Labor
2 Code Section 2698 *et. seq.* the Private Attorneys General Act of 2004 (“PAGA”) and the
3 distribution of seventy-five percent of these penalties (\$37,500.00) to the LWDA and twenty-five
4 percent (\$12,500.00) to employees who worked within the PAGA Period (“Aggrieved
5 Employees”); and

6 7. Order the funding and distribution of the Gross Settlement Amount in the manner
7 set forth in the Settlement.

8 The motion is based upon this Notice; the attached memorandum of points and authorities;
9 the Declaration of Heather Davis, Esq. and exhibits thereto; the Declaration of Hector Almazan;
10 the Declaration of Madely Nava of Apex Class Action Administrators and exhibits thereto; the
11 pleadings and other records on file with the Court in this matter, and any other further evidence
12 or argument that the Court may properly receive at or before the hearing.

13
14 DATED: May 2, 2025

PROTECTION LAW GROUP, LLP

15
16 By: 

17 Heather Davis
18 Amir Nayebdadash
19 Brendan J. Burton
20 Shadi Sahebghalam
21 *Attorneys for Plaintiff*
22 HECTOR ALMAZAN
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff HECTOR ALMAZAN (“Plaintiff”) seeks final approval of a class action and PAGA settlement with Defendant HATHAWAY-SYCAMORES CHILD AND FAMILY SERVICES (“Defendant”). The settlement provides for: (1) a non-reversionary Gross Settlement Amount of \$501,399.40, exclusive of any employer-side payroll taxes; (2) attorneys’ fees in the amount of \$175,489.79; (3) actual litigation costs and expenses incurred by Class Counsel in the amount of \$25,297.99; (4) Settlement Administration Costs of \$14,000.00; (5) payment of \$50,000.00 in PAGA penalties – 75% (\$37,500.00) of which will be paid to the LWDA and 25% (\$12,500.00) of which will be paid to Class Members employed during the PAGA Period; (6) Class Representative Service Payment in the amount of \$7,500.00 to each named Plaintiff (total of \$15,000). The result is a Net Settlement Amount of \$229,111.62 that will be distributed to the following Settlement Class of 886¹ individuals who worked for Defendants at any time between March 29, 2017, to July 17, 2023. Participating Class Members will receive an average Individual Settlement Payment of \$2.10 and a high payment of \$691.39. *See* Declaration of Madely Nava of Apex Class Action Administrators (“Apex Decl.”) ¶ 14.

At Preliminary Approval, the Court established a presumption of fairness after extensively analyzing the terms of the Settlement and underlying settlement efforts. This presumption of fairness is confirmed here following notice of the proposed settlement to the class. Out of 890 Settlement Class Members, to date, there have been four (4) requests for exclusion and **zero** objections to the terms of the settlement. This lack of objections or and only few requests for exclusions is evidence, in addition in addition to the factors extensively analyzed at Preliminary Approval, that demonstrates the Settlement is a fair result. Accordingly, the Court should grant final approval of the proposed Settlement.

¹ As of the date of filing this motion, four (4) Class Members have requested to be excluded. The deadline for Class Members to request exclusion from, or object to the Settlement was October 7, 2024. Plaintiff filed an updated declaration from the Settlement Administrator confirming the number of opt-outs, per the Court’s Order.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant HATHAWAY-SYCAMORES CHILD AND FAMILY SERVICES (“Defendant”) is a behavioral health and child welfare agency that provides programs and services to children, young adults, adults, and families throughout California. Defendant employed Plaintiff to work as an hourly-paid, non-exempt employee from approximately October 2019, to February 4, 2021. Declaration of Heather Davis in Support of Motion for Final Approval (“Davis Decl.”) ¶ 12; *see also* Declaration of Hector Almazan in Support of Motion for Final Approval (“Almazan Decl.”) ¶ 2.

On March 25, 2021, Plaintiff provided notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendant of his intent to seek civil penalties pursuant to the Private Attorneys General Act (the “PAGA”) for violations of California wage and hour laws. Davis Decl. ¶ 13. Exhibit (“Ex.”) 1.

On March 29, 2021, Plaintiff filed a class action complaint with the Los Angeles County Superior Court, Case No. 21STCV12008, against Defendant alleging the following nine (9) causes of action: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely Paid; (6) Failure to Provide Accurate Wage Statements; (7) Unreimbursed Business Expenses; (8) Failure to Pay Accrued Vacation; and (9) Violation of California Business & Professions Code § 17200, *et seq.* After more than sixty-five (65) days since the mailing for Plaintiff’s PAGA Notice Letter and the LWDA not having indicated that it intended to investigate the violations discussed in the PAGA Notice Letter, on June 2, 2021, Plaintiff filed a First Amended Class and Representative Action Complaint (“FAC”) adding a tenth (10th) cause of action under PAGA. Davis Decl. ¶¶ 14-15.

On July 22, 2021, Defendant filed its Motion to Compel Plaintiff’s Claims to Arbitration. The Motion was set to be heard on October 4, 2021, at 9:00 a.m. Davis Decl. ¶ 16.

While Defendant’s Motion to Compel Arbitration was pending, Plaintiff and Defendant (collectively the “Parties”) extensively met and conferred regarding the claims, defenses, and attending private mediation. Initially the Parties reserved a February 8, 2022, mediation date with Kelly Knight. On September 17, 2021, the Parties submitted a joint stipulation to continue the October 4, 2021, hearing on Defendant’s Motion to Compel Arbitration

1 to a date after March 2022. Davis Decl. ¶¶ 17-18.

2 On September 21, 2021, Plaintiff filed his Opposition to Defendant's Motion to Compel
3 Arbitration. Defendant's Motion to Compel Arbitration was continued to March 8, 2022, pursuant
4 to the Parties' joint stipulation. Davis Decl. ¶ 19.

5 Prior to the February 8, 2022, scheduled mediation, Defendant's counsel requested a
6 continuance of the mediation due to an unexpected emergency. Mediation was cancelled. Davis
7 Decl. ¶ 20.

8 After full briefing and oral arguments, on March 8, 2022, the Court denied Defendant's
9 Motion thus allowing Plaintiff to proceed with his lawsuit. Davis Decl. ¶ 21.

10 On March 9, 2022, Plaintiff served Defendant with Form Interrogatories-General Set One;
11 Demand for Production of Documents, Set One; and Special Interrogatories, Set One. As part
12 of Plaintiff's Special Interrogatories, Plaintiff included a proposed *Belaire-West* Notice and
13 emailed the proposed notice to Defendant's counsel in Word for Defendant's review and direct
14 input/edit if any. On April 19, 2022, the Parties filed their Joint Informal Discovery Conference
15 ("IDC") Statement over an impasse reached in meeting and conferring regarding the form and
16 content of the *Belaire-West* Notice. The IDC was held on May 16, 2022. The *Belaire-West* Notice
17 was mailed to the putative class members on June 27, 2022. Davis Decl. ¶¶ 22-23.

18 Meanwhile, the Parties continued discussions regarding mediation and agreed to attend
19 mediation with Kim Deck, Esq., a mediator with substantial experience handling wage and hour
20 matters, for August 29, 2022. On July 12, 2022, the Parties executed and filed a Joint Stipulation
21 Regarding Discovery and Mediation. Davis Decl. ¶¶ 24-25.

22 On August 19, 2022, Defendant filed and served its Notice of Appeal Designating Record
23 on Appeal regarding the Court's denial of Defendant's Motion to Compel Arbitration. Davis Decl.
24 ¶ 26.

25 In advance of mediation, Defendant provided Plaintiff's Counsel with extensive informal
26 discovery including all relevant policies and handbooks in place during the Class Period, which
27 included all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment
28 of wages and other relevant areas of investigation, a randomly selected 20% sampling of time

1 and payroll data for the putative class, and figures and information regarding the class size and
2 composition. The randomly-selected 20% sampling included records for putative class members
3 who were employed throughout different time periods during the Class Period, that is
4 representative of the Class. With this data for the Class, Plaintiff's Counsel and their retained
5 expert were able to perform a comprehensive damages analysis and estimate Defendant's
6 potential violations, liability, and exposure, including, and not limited to, analyzing time and pay
7 data, considering potential meal period violations, potential rest period violations, potential
8 synthetic meal period recordings, unpaid and rest period premiums, rounding, overtime and
9 premium payments, etc. This discovery and investigation allowed Plaintiff's Counsel to perform
10 a comprehensive damages analysis and estimate Defendant's potential liability. Davis Decl. ¶ 27.

11 After extensive review of the mediation documents and other information, on August
12 29, 2022, the Parties attended a full day mediation. At the mediation, the Parties engaged in
13 intensive settlement discussions during which they debated their respective positions and
14 exchanged views regarding the strengths and weaknesses of the alleged claims, but despite the
15 help of the mediator were unable to reach an agreement. Davis Decl. ¶ 28.

16 Following the failed mediation, on August 26, 2022, Defendant filed Appellant's Opening
17 Brief, Appendix of Evidence, and Certificate of Interested Parties in the Second District Court of
18 Appeals, for Defendant's appeal from the Court's denial of the Motion to Compel Arbitration.
19 Davis Decl. ¶ 29.

20 The Parties still continued discussions regarding continued mediation and/or
21 settlement. On or about December 2022, the Parties met and conferred and agreed to attend a
22 second mediation with the Hon. Daniel J. Buckley (Ret.) and set a date of April 18, 2023. Davis
23 Decl. ¶ 30.

24 Defendant's Counsel provided updated information as to the putative class members
25 including the number of current employees, workweeks and pay periods. Davis Decl. ¶ 31.

26 On April 18, 2023, during the last mediation session with the Hon. Daniel J. Buckley
27 (Ret.), the Parties again engaged in intensive settlement discussions during which they debated
28 their respective positions and exchanged views regarding the strengths and weaknesses of the

1 alleged claims, but despite the help of the mediator were again unable to reach an agreement.
2 Also on April 18, 2023, Defendant represented to Plaintiff that it was undergoing significant
3 financial difficulties that would impact its ability to fund a class-wide judgment and potentially
4 proceed with litigation; Defendant represented it would not be able to fund a settlement beyond
5 the range contemplated by the Parties without it being destructive to the business. Davis Decl. ¶¶
6 32-33.

7 Although the Parties were unable to reach an agreement at mediation, the Parties agreed
8 to provide Defendant additional time to compile financial documents that would
9 substantiate its claims of financial distress. Defendant provided Plaintiff with confidential
10 financial records including multiple years' worth of Balance Sheets, General Ledgers, and
11 extensive tax documents. Plaintiff's Counsel then provided them to an outside financial expert to
12 confirm Defendant's representations. Following the review of the confidential financial
13 documents and information supplied by Defendant, and with the help of the mediator, the Hon.
14 Buckley (Ret.), the Parties were eventually able to reach an agreement to settle the matter on a
15 class and representative basis for a Gross Settlement Amount of \$500,000.00, based on
16 Defendant's current financial condition. Thereafter, the Parties executed a Memorandum of
17 Understanding which memorialized the key settlement terms. Davis Decl. ¶¶ 34-35.

18 Based on information discovered throughout the course of the litigation, on
19 September 29, 2022, Plaintiff, by online filing with the LWDA and by certified mail to Defendant,
20 submitted an Amended PAGA Notice with the LWDA. Davis Decl. ¶ 36, Ex. 2.

21 On December 6, 2023, the Parties stipulated to permit Plaintiff leave to file a Second
22 Amended Complaint. As permitted by the Court, the Second Amended Complaint was filed on
23 December 11, 2023. Davis Decl. ¶ 37.

24 The Parties worked diligently to negotiate and memorialize the terms of a long form
25 settlement agreement. On December 12, 2023, after extensive discussions and multiple
26 revisions to the agreement, the Parties entered into a fully executed Joint Stipulation of Class
27 Action and PAGA Settlement ("Settlement Agreement" or "Settlement"). Davis Decl. ¶ 38. Ex.
28 3.

1 On December 13, 2023, Plaintiff filed for preliminary approval of the Agreement.
2 Plaintiff's Motion was to be heard on January 19, 2024. On January 8, 2024, the Court, on its own
3 motion, continued the hearing on Plaintiff's Motion for Preliminary Approval until February 29,
4 2024, at 10:00 a.m. Davis Decl. ¶¶ 39-40.

5 On February 29, 2024, the Court conferred with counsel and ordered Plaintiff to fix a
6 couple of issues with his Motion for Preliminary Approval. The Court continued the February 29,
7 2024, hearing until April 18, 2024, to allow Plaintiff time to draft and file an Amended Joint
8 Stipulation of Class Action and PAGA Settlement ("Amended Settlement Agreement" or
9 "Amended Settlement") and a Supplemental Declaration and Proposed Order. Davis Decl. ¶ 41,
10 Ex. 3.

11 Thereafter, the Court continued the hearing on Plaintiff's Motion for Preliminary
12 Approval of the Amended Settlement to May 28, 2024, at 9:00 a.m. Davis Decl. ¶ 42.

13 On May 28, 2024, the Court approved Plaintiff's Motion for Preliminary approval, and ,
14 the Court found on a preliminary basis that the settlement was fair, reasonable, and adequate.
15 Davis Decl. ¶ 43.

16 After submitting the Notice and the Court's Order granting Preliminary Approval to the
17 Settlement Administrator, Defendant's Counsel submitted the Class data to the Settlement
18 Administrator. The Settlement Administrator's preliminary calculations evidenced a higher
19 Workweek count worked by the Class during the Class Period which Defendant through their
20 counsel confirmed. There were approximately 94,093 Workweeks at issue during the Class Period
21 (for an increase of approximately 10.28%). In light of the increased number of Workweeks and
22 pursuant to paragraph 40 of the Settlement Agreement (the escalation clause), there was an
23 increase to the Gross Settlement Amount by 0.28% from \$500,000.00, to \$501,399.40. Davis
24 Decl. ¶ 44.

25 On June 5, 2024, the Court granted the Parties executed and filed an Amended Order
26 Granting Plaintiffs' Motion for Preliminary Approval and Increasing the Gross Settlement
27 Amount. In its June 5, 2024, Order, the Court entered an Amended Order granting preliminary
28 approval of the Settlement and ordering distribution of Notice to the Class. Davis Decl. ¶ 45, Ex.

1 4.

2 Pursuant to the Court's Order, the Settlement Administrator mailed Notice to the Class
3 Members on July 2, 2024. The deadline for Class Members to opt-out or object to the Settlement
4 was September 3, 2024. The deadline for the Settlement Administrator to submit a final report
5 regarding opt-outs and objections was September 20, 2024. Davis Decl. ¶ 46.

6 Plaintiff's Motion for Final Approval needed to be filed by August 2, 2024, well before
7 the Notice period ended, or the final report was due. Paragraph 32 of the Settlement Agreement
8 states that the Response Deadline shall be sixty (60) days for Class Members submit Requests for
9 Exclusion, objections or disputes. Paragraph 32 also states that the Response Deadline shall be
10 extended fifteen (15) days for any Class Members who are re-mailed to submit Requests for
11 Exclusion, Objections, or Disputes. *See* Settlement Agreement ¶32; Davis Decl. ¶ 47.

12 Therefore, on July 24, 2024, the Parties filed a Joint Stipulation to Continue the hearing
13 on Plaintiff's Motion for Final Approval to November 4, 2024. The Parties' Joint Stipulation was
14 denied. Davis Decl. ¶ 48.

15 On September 10, 2024, Plaintiff filed his Motion for Final Approval of Class Action and
16 PAGA Settlement ("MFA"). Davis Decl. ¶ 49. On September 18, 2024, Plaintiff filed a
17 Supplemental Declaration of Madely Nava of Apex Class Action Administration in Support of
18 MFA. Davis Decl. ¶ 50.

19 On September 19, 2024, the Court issued a Notice that continued Plaintiff's MFA Hearing
20 from October 4, 2024, to January 16, 2025. Davis Decl. ¶ 51. On January 6, 2025, the Court again
21 issued a Notice that continued Plaintiff's MFA Hearing from January 16, 2025, to May 29, 2025,
22 at 9:00 a.m. Davis Decl. ¶ 52.

23 **III. THE ADMINISTRATION PROCESS AND PLAN OF DISTRIBUTION**

24 The Court approved Settlement Administrator for this matter is Apex Class Action
25 Administrators ("Settlement Administrator"). Davis Decl. ¶ 62. On June 5, 2024, Class Counsel
26 provided the Settlement Administrator with the Court-approved text for the Class Notice. The
27 Class Notice included the formula for determining the estimated sum to be paid to each individual
28 from the Net Settlement and stated each Class Members' estimated Individual Settlement

1 Payment. Davis Decl. ¶ 63; Apex Decl. ¶ 4. On June 18, 2024, counsel for Defendant provided
2 the Settlement Administrator with the Class Mailing List. The Class List contained 890
3 individuals with a total of 94,093 Workweeks, which exceeds the 85,322 maximum Workweeks
4 per the Settlement Agreement by 8,771 Workweeks, for a 10.28% (\$1,399.40) increase to the
5 Gross Settlement Amount. *See* Davis Decl. ¶ 64. Apex Decl. ¶ 5.

6 To date, there has been no objections to the Settlement, four (4) requests for exclusion,
7 and no disputes. The deadline for Class Members to submit workweek disputes, request exclusion
8 from, or object to the Settlement expired on October 7, 2024. Apex Decl. ¶¶ 11, 12.

9 According to the terms of the Settlement Agreement, within thirty (30) calendar days of
10 the Effective Date of the Settlement (as defined in the Settlement Agreement), Defendant will
11 deposit the Gross Settlement Amount and all applicable employer-side payroll taxes into a
12 Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator. Within
13 fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will
14 issue payments for: (1) Individual Class Payments for all Participating Class Members; (2)
15 Individual PAGA Payments to all Aggrieved Employees; (3) the LWDA PAGA Payment; (4)
16 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (5) the Class
17 Representative Service Payments to Plaintiffs; and (6) Settlement Administration Costs. *See*
18 Settlement Agreement ¶¶ 41, 71.

19 Any Settlement checks paid to Settlement Class Members remaining uncashed after 180
20 days will be transferred to the California State Controller’s Office pursuant to California Civil
21 Code § 1500 and held in trust for such Settlement Class Members. As such, no “unpaid residue”
22 under CCP § 384 will result from the settlement. *See* Settlement Agreement ¶ 62.

23 **IV. STANDARD OF REVIEW FOR FINAL APPROVAL**

24 The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.* 48
25 Cal.App.4th 1794 (1996) California courts look to federal authority for guidance with class action
26 settlements. *Id.* at 1801, n.7. “In general, questions whether a settlement was fair and reasonable,
27 whether certification of the class was proper, and whether the attorney fee award was proper are
28 matters addressed to the trial court’s broad discretion.” *Wershba v. Apple Computer, Inc.*, 91

1 Cal.App.4th 224, 234-35 (2001) (disapproved of on other grounds).

2 Accordingly, a court's decision to approve a class action settlement may be reversed only
3 upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.*, 150 F.3d
4 1011,1026 (9th Cir. 1998). To determine whether the settlement is fair, courts consider relevant
5 factors such as the strength of Plaintiff's case, the risk of further litigation, the risk of maintaining
6 class action status, the amount offered in settlement, the extent of discovery completed, the
7 experience and views of counsel, and the reaction of the class members among others. *Dunk*, 48
8 Cal.App.4th at 1801. These factors are not exclusive and "the court is free to engage in a balancing
9 and weighing of the factors depending on the circumstances of each case." *Wershba*, 91
10 Cal.App.4th at 245 (disapproved on other grounds).

11 In considering the class settlement, the court need not reach any ultimate conclusions on
12 the issues of fact and law which underlie the merits of the dispute. *7-Eleven Owners for Fair*
13 *Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). The inquiry is not whether
14 the settlement agreement is the best one that class members could have possibly obtained, but
15 whether the settlement taken as a whole is "fair, adequate, and reasonable." *See Chavez v. Netflix,*
16 *Inc.* 162 Cal.App.4th 43, 55 (2008). A settlement need not obtain 100 percent of the damages
17 sought in order to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 251 (disapproved of on
18 other grounds). Even if the relief afforded by the proposed settlement is substantially narrower
19 than it would be if the lawsuit was to be successfully litigated, that is no bar to a class settlement
20 because the public interest may indeed be served by a voluntary settlement in which each side
21 gives ground in the interest of avoiding prolonged litigation. *Id.* The burden is on the proponent
22 of the settlement to show that it is fair and reasonable. *Id.* at 245 (disapproved of on other
23 grounds). However, a presumption of fairness exists where: (1) the settlement is reached through
24 arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
25 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
26 objectors is small. *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

27 **V. THE SETTLEMENT IS PRESUMED FAIR**

28 Because this Court preliminarily approved the Settlement, it necessarily determined the
Settlement appeared to be fair and reasonable. Plaintiff's Motion for Preliminary Approval

1 established the presumption of fairness. The same factors that allowed the Court to previously
2 approve the settlement apply here and are reinforced in these moving papers including: (1) the
3 Settlement was reached through arm's-length bargaining; (2) investigation and discovery were
4 sufficient to allow counsel and the court to act intelligently; and (3) Class Counsel are experienced
5 in similar litigation. Additionally, the reaction of the Class Members, also supports the
6 reasonableness of the Settlement. *See* Davis Decl. ¶¶ 32, 41, 44.

7 **A. The Settlement Was Reached Through Arm's Length Bargaining**

8 This Settlement was reached following two days of mediation with Kim Deck, Esq., and
9 the Hon. Daniel J. Buckley (Ret.), respectively, both mediators with substantial experience
10 involving wage and hour class actions and PAGA actions. The mediations occurred only after
11 substantial informal discovery and extensive analysis of the claims at issue. These negotiations
12 were at arm's length, non-collusive, and, although conducted in a professional manner, were
adversarial. Davis Decl. ¶¶ 24-25, 27-28, 30, 32.

13 **B. There was Sufficient Investigation and Discovery by Experienced Counsel**

14 Class Counsel conducted significant investigation into the claims alleged by Plaintiff
15 before reaching a settlement in this matter. Class Counsel met with Plaintiff, conducted legal
16 research regarding the applicable Labor Code Sections, and thoroughly researched Defendant's
17 employment policies and practices. Prior to mediation, the Parties engaged in extensive formal
18 and informal discovery. Prior to both mediations Defendant produced a 20% sampling of time
19 and payroll records, written policies including their employee handbook, and other relevant
20 documents and information regarding the putative class. This allowed Plaintiff to conduct a class-
21 wide analysis of Defendant's potential damages, and to intelligently and effectively analyze the
22 strengths and weaknesses of the case and Defendant's potential exposure. The Parties extensively
23 briefed these issues, provided this analysis to the mediators, and debated their respective
24 positions. With the mediators' help the Parties were eventually able to reach an agreement to
25 settle this matter based on their analysis and understanding of the case. Davis Decl. ¶¶ 24-25, 27-
26 28, 30, 32-35.

27 Moreover, the settlement negotiations were conducted by highly capable and experienced
28 counsel. Class Counsel's experience and the extensive investigation allowed Plaintiffs to enter

1 this Settlement aware of the risks associated with the case and permitted Class Counsel to
2 negotiate an informed, reasonable, and intelligent Settlement. Davis Decl. ¶¶ 2-11. After
3 substantial discovery and investigation, it is Class Counsel’s opinion that the settlement is in the
4 best interest of the Class because it provides for a guaranteed result over a reasonably short period
5 of time as opposed to waiting years for the same, or possibly a worse, result and will result in
6 significant savings in costs. The substantial economic uncertainty of businesses during the
7 COVID-19 pandemic only highlights the value of such a guaranteed result. Davis Decl. ¶¶ 53-59.

8 **C. There Have Been No Objections And Only Four (4) Requests For Exclusion**

9 California courts have consistently found that a small number of objectors indicates the
10 Class’s support for a settlement and strongly favors final approval. *See Wershba*, 91 Cal.App.4th
11 at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners*, 85 Cal.App.4th at 1152-
12 53 (final approval granted despite 9 objectors). Here, as of the filing of this Motion, not a single
13 member of the Settlement Class has objected to the Settlement or submitted a dispute, and only
14 four (4) have requested to be excluded. Apex Decl. ¶¶ 9-11. Class Members had until October 7,
15 2024, to object to or request exclusion from the settlement. The lack of objections or disputes,
16 and only four (4) requests for exclusion to date speak volumes about the fairness, reasonableness,
17 and adequacy of this Settlement.

18 **VI. THE REQUESTED ATTORNEYS’ FEES SHOULD BE APPROVED**

19 **A. The Standard For Attorneys’ Fees In A Class Action**

20 Where the amount of a settlement is a “certain easily calculable sum of money,” California
21 courts may calculate attorneys’ fees as a reasonable percentage of the settlement created. *See*
22 *Dunk*, 48 Cal.App.4th at 1808. The ultimate goal is the award of a “reasonable” fee to compensate
23 counsel for their efforts, irrespective of the method of calculation. *See Apple Computer, Inc. v.*
24 *Super. Ct.*, 126 Cal.App.4th 1253, 1270 (2005). Trial courts have wide latitude in assessing the
25 value of attorneys’ fees and their decisions will not be disturbed on appeal absent a manifest abuse
26 of discretion. *See Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000). California law
27 provides that attorneys’ fees awards should be equivalent to fees freely negotiated in the legal
28 marketplace and paid in comparable litigation based on the result achieved and risk incurred. *Id.*
at 47, 50. Fee awards that are too small will “chill the private enforcement essential to the

1 vindication of many legal rights . . .” *Id.* at 53. Therefore, fees in a class action should approximate
2 the terms of a contingent-fee contract negotiated by an attorney and client in comparable
3 litigation. *Id.* at 47. The percentage-of-the-benefit approach is preferred in such cases because “it
4 better approximates the workings of the marketplace than the lodestar approach.” *Id.*

5 **B. A Fee Award Based on a Percentage of the Gross Settlement Amount is**
6 **Appropriate**

7 California and federal courts have long recognized that an appropriate method for
8 determining the award of attorneys’ fees is based on a percentage of the total value made available
9 to class members by the settlement. *See Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th
10 Cir. 1977); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977); The California Supreme Court has urged
11 trial courts to follow federal authority in this area. *See Green v. Obledo*, 29 Cal.3d 126, 146
12 (1981). The purpose of this equitable doctrine is to spread litigation costs among all beneficiaries
13 so that the active beneficiary does not bear the entire burden alone. *See Vincent*, 557 F.2d at 769.

14 Courts have consistently recognized that class litigation is necessary to protect the rights
15 of individuals whose injuries and/or damages are too small to economically justify individual
16 representation. Accordingly, in determining a reasonable common fund fee award, courts award
17 fees to serve as an economic incentive for lawyers to engage in class litigation that will permit
18 increased access to the judicial system for meritorious claims and deter wrongdoing. *See*, R.
19 Pearle, *California Attorney Fee Awards* (CEB, 1993) §7A, p. 5-7; *Vincent*, 557 F.2d at 769.

20 Furthermore, a common fund award is not dependent on a determination of the actual
21 amount claimed out of the fund by those entitled—it is the creation of the fund that is the crucial
22 fact. *See Winslow v. Harold G. Ferguson Corp.*, 25 Cal.2d 274, 284 (1944); *Wershba*, 91
23 Cal.App.4th at 247 (holding that reasonable attorneys’ fees are based on the total value of the
24 settlement obtained by the efforts of counsel) (disapproved on other grounds).

25 Historically, courts have awarded percentage fees in the range of 20% to 50%, depending
26 on the circumstances of the case. *Newberg on Class Actions*, 4th Ed. 2002, §14:6. According to
27 *Newberg*, “. . . no general rule could be articulated as to what is a reasonable percentage of a
28 common fund. Usually 50% of the fund is the upper limit on a reasonable fee award . . . though
somewhat larger percentages are not unprecedented.” *Id.* *Newberg* further notes that achievement

1 of a substantial recovery with modest hours expended should not be penalized, but should be
2 rewarded for considerations of time saved by superior services performed. *Id.*

3 The amount of attorney fees provided by the Settlement Agreement, *i.e.* 35% of the Gross
4 Settlement Amount, is well-within the range of reasonableness in light of the facts and
5 circumstances surrounding this case. Class Counsel risked substantial economic loss when they
6 took this case on a contingency basis, knowing that there would likely be a long battle with two
7 aggressive defense firms. As a result of Class Counsel taking on this risk and the efforts of Class
8 Counsel, the Settlement Class Members will now be able to recover for these claims that would
9 otherwise have gone unaddressed. The requested fee therefore makes sense because (1) it is
10 consistent with the private marketplace where contingent-fee attorneys are customarily
11 compensated on such a basis; (2) it aligns the interests of Class Counsel and absent Class
12 Members in achieving the maximum possible resolution of the case; (3) it encourages the most
13 efficient resolution of the litigation by providing an incentive for early, yet fair and reasonable
14 settlement and (4) reflects the work performed, risks incurred, results obtained, and experience of
15 Class Counsel in handling similar matters. As such, Class Counsel has obtained a fair recovery
16 for the Class which justifies a fee award based on the percentage of the common fund. *See Davis*
17 *Decl.* ¶¶ 54-80.

18 **C. The Fee is Reasonable Based on the Dunkel Factors**

19 In *Camden I Condominium Association, Inc. v. Dunkel*, 946 F.2d 768, 772 (11th Cir.
20 1991), the court identified twelve factors to be considered in determining whether fee awards are
21 reasonable in a common fund case.² The court also noted that, “the analysis in a common fund
22 case focuses not on the plaintiff’s position as ‘prevailing parties,’ but on a showing that the fund
23 conferring a benefit on the class resulted from their efforts” and thus in common fund cases “the

24
25 ² These factors include (1) the time and labor required, (2) the novelty and difficulty of the questions
26 involved, (3) the skill requisite to perform the legal services properly, (4) the preclusion of other
27 employment by the attorney due to the acceptance of the case, (5) the customary fee, (6) whether the fee is
28 fixed or contingent, (7) time limitation imposed by the client or the circumstances, (8) the amount involved
and results obtained, (9) the experience, reputation and ability of the attorney, (10) the undesirability of the
case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar
cases.

monetary results achieved predominate over all other criteria.” *Id.* at 774. Plaintiffs will address some of the factors that are particularly relevant here.

1. Time and Labor Required

Class Counsel has aggressively litigated this Action from the initial pleadings to the settlement of this Action. Class Counsel has actively participated in this litigation, including attending client meetings and attending status conferences with the Court. As a result of Class Counsel’s aggressive efforts Defendant agreed to settle this Action. The ongoing work performed by Class Counsel has been extensive, complex and ultimately successful in achieving a fair settlement for the Class. In order to reach a settlement, Class Counsel conducted extensive research in order to accurately and successfully analyze the complex issues presented in this case and in order to determine if they could be litigated on a class and representative basis. Class Counsel conducted extensive formal and informal discovery, researched defenses raised by Defendant, investigated Defendant’s policies, practices, and procedures, analyzed hundreds of pages documents and extensive time and payroll data, participated in case strategy and analysis, drafted, reviewed, and revised pleadings, prepared for and attended mediation, participated in settlement negotiations, and drafted and revised the settlement agreement among other services. Extensive investigation was conducted both before filing this lawsuit and prior to mediations.

This case consumed more than 393.80 hours in total. Davis Decl. ¶ 90, Ex. 5. However, a settlement was finally achieved, despite all obstacles, because Class Counsel used their complex wage-and-hour litigation experience and skills to obtain the Settlement.

2. The Skill Required to Perform Legal Services

This matter also required substantial skill to litigate and Class Counsel was required to overcome numerous barriers in order to reach a settlement. Defendant denied liability, felt very strongly about their ability to prevail, challenged the theories of Class Counsel, and mounted several defenses that posed significant problems moving forward. Despite this, Class Counsel were able to use their substantial experience in complex wage and hour litigation to convince Defendant to attend mediation and discuss a potential settlement rather than proceed with further litigation. Class Counsel’s skill and experience also allowed them to review and analyze a large amount of time and payroll data, a complex process that took considerable time and energy in

1 order to determine Defendant's underlying practices and potential damages. This settlement,
2 against experienced defense counsel and despite strong potential defenses, was possible because
3 of Class Counsel's skill and experience. Davis Decl. ¶¶ 72-86.

4 *3. The Value, Amount, and Results Achieved*

5 The Settlement represents a fair resolution of this case given the risks inherent in litigating
6 it through trial and possible appeals. Counsel obtained a non-reversionary Gross Settlement
7 Amount of \$501,399.40, exclusive of employer-side payroll taxes. Although Class Counsel
8 predict that Plaintiff would prevail on all causes of action at trial, a number of risks reduced the
9 case's value. For instance, as discussed extensively in Plaintiff's Motion for Preliminary
10 Approval, Defendant claimed there were substantial problems with Plaintiff's claims. Defendant
11 contended that its policies were legally-compliant, and raised issues with Plaintiff's meal break,
12 rest break and off-the-clock claims regarding the necessity of individualized proof. Defendant
13 contended these issues would prevent Plaintiff from successfully recovering on these claims
14 which were a major focus of the litigation. However, despite these challenges, Defendant agreed
15 to pay a non-reversionary Gross Settlement Amount of \$501,399.40, meaning that on average the
16 Participating Class Members will receive a payment of approximately \$252.27, and the highest
17 payment will be approximately \$619.39. This is an outstanding result that in many instances
18 exceeds the awards obtained in similar wage and hour settlements. *See* Davis Decl. ¶ 91; Apex
19 Decl. ¶¶ 15-17.

20 *4. Whether the Fee is Fixed or Contingent*

21 Whether the representation was provided on a contingency basis, as it was in this case, is
22 an important factor:

23 **A contingent fee must be higher than a fee for the same legal services paid as**
24 **they are performed.** The contingent fee compensates the lawyer not only for the
25 legal services he renders but for the loan of those services. A lawyer who both bears
26 the risk of not being paid and provides legal services is not receiving the fair market
27 value of his work if he is paid only for the second of these functions. *Cates v.*
28 *Chiang*, 213 Cal.App.4th 791, 823 (2013).

26 The fact that this case was litigated on a contingent basis also strongly supports the award
27 of attorneys' fees requested by Plaintiff. If Class Counsel had been unsuccessful, they would not
28 receive any fee or recover any portion of the substantial expenses spent litigating this matter.

1 Class Counsel has borne all of the risks and costs of litigation and will not receive any
2 compensation until recovery is obtained in this case. These are the types of risks Class Counsel
3 face because of their decision to litigate this matter on a contingency basis. The contingent risk is
4 a relevant factor when considering the reasonableness of the requested fees. Davis Decl. ¶¶ 80-84.

5 **D. The Fee is Reasonable Under a Lodestar Analysis**

6 While the percentage-of-the-benefit approach is endorsed as the better approximation of
7 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
8 method to “cross-check” the results of the other. This said, Courts have cautioned that the primary
9 basis of the fee award in common fund cases remains the percentage of the fund method and have
10 cautioned that this that class counsel should not necessarily receive a lesser fee achieving a speedy
11 and timely result for class members in need of immediate relief. *See e.g. Vizcaino v. Microsoft*
12 *Corp.*, 290 F. 3d. 1043, 1050 fn.1 (2002). Indeed, courts have noted that “it is widely recognized
13 that the lodestar method creates incentives for counsel to expend more hours than may be necessary
14 on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward
15 early settlement.” *Id.* (quoting *Camden I Condominium Ass’n*, 946 F.2d at 773-74.)

16 Here, the lodestar is calculated based on reasonable hours at reasonable prevailing hourly
17 rates for the attorneys who worked on this matter. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131-
18 32 (2001). Counsel are entitled to compensation for every hour reasonably spent on the matter.
19 *See Id.* at 1133. Further, this amount may be enhanced and courts in California routinely apply
20 multipliers between 1 and 4 to a party’s requested lodestar amount based on some of the same
21 factors identified above. *See Cates*, Cal.App.4th at 822.

22 **1. Counsel Spent a Reasonable Amount of Time**

23 Reasonableness of hours is assessed by “the entire course of the litigation, including
24 pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v.*
25 *Las Virgenes Municipal Water Dist.*, 79 Cal.App.4th 440, 447 (2000). As discussed above, this
26 case was highly contested and required a significant amount of time and labor. Defendant raised
27 significant defenses and denied liability. Class Counsel invested significant time and labor into
28 this matter even before the lawsuit was filed to investigate Defendant’s policies, practices,
business model, and merits-based issues. Class Counsel undertook significant efforts and did

1 substantial research and investigation both prior to and after the filing of the Action. Class
2 Counsel also undertook significant preparation in order to resolve this Action prior to mediation.
3 Class Counsel gathered and analyzed data from thousands of pages of documents which took
4 substantial time to review and analyze. After an agreement was reached in principle, Class
5 Counsel spent significant time negotiating terms of the settlement to obtain the best possible
6 outcome for the Class. Class Counsel conservatively worked a total of 393.80 hours on the Action.
7 *See Davis Decl. ¶ 90, Ex. 5.* Accordingly, Class Counsel spent a reasonable amount of time on
8 the Action. Class Counsel diligently took all steps necessary to ensure this Action was litigated
9 effectively and efficiently. Accordingly, the time spent on the Action was reasonable.

10 ***2. Class Counsel's Hourly Rate is Reasonable***

11 Both California and federal courts recognize that attorneys should be compensated for
12 providing representation on a contingency basis and for taking on the risks associated with said
13 representation, as well as being provided with financial incentives to enforce important rights and
14 protections like those at issue in this Action. *See Ketchum*, 24 Cal.4th at 1132-33. In awarding
15 attorneys' fees, the aim is to mirror "the established practice in the private legal market of
16 rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
17 normal hourly rates for winning contingency cases." *See Id.*

18 As previously discussed, Class Counsel have been actively involved in the Action from
19 the filing of the initial complaint to completing these final approval papers. Class Counsel
20 invested time and bore the risk that there could have been no recovery. Ultimately, Class Counsel
21 was successful in reaching a settlement of \$501,399.40 on behalf of the Class. To date, the
22 lodestar for Class Counsel is approximately \$255,970.00. *See Davis Decl. ¶¶ 86-96.*

23 Accordingly, given the contingent risk incurred by Class Counsel, the difficulty of the
24 questions involved, the benefit conferred on the Class, and the skill displayed by Class Counsel,
25 the application of a negative multiplier is appropriate. For these reasons, Plaintiff respectfully
26 requests the Court award the requested attorneys' fees of \$175,489.79 (35% of the Gross
27 Settlement Amount).

28 **VII. THE REQUESTED COSTS ARE FAIR AND REASONABLE**

Class Counsel request the reimbursement of the costs incurred litigating this case in the

1 amount of \$25,297.99. *See* Davis Decl. ¶ 97. Ex. 6. These costs include filing fees, all costs
2 associated with attending hearings, mediation fees, fees for expert analysis of Defendant’s time
3 and payroll records, and \$391.96 in anticipated future costs associated with the filing of this
4 motion, filing the final report and other costs necessary to fully resolve this matter. *See* Davis
5 Decl. ¶ 97, Ex. 6.; Ex. B. These costs are less than the \$30,000.00 contemplated under the
6 settlement, meaning an additional \$4,310.05 will be distributed to Participating Class Members.
7 Davis Decl. ¶ 97.

8 **VIII. THE REQUESTED SERVICE PAYMENTS ARE FAIR AND REASONABLE**

9 Named Plaintiffs in class action lawsuits are eligible for reasonable enhancements as
10 compensation “for the expense or risk they have incurred in conferring a benefit on other members
11 of the class.” *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles*, 186 Cal.App.4th 399,
12 412 (2010). The criteria courts may consider in determining whether to make an enhancement
13 payment include: (1) risks faced by the representative; (2) personal difficulties encountered; (3)
14 the time and effort spent on the case; (4) the duration of the litigation; and (5) the personal benefit
15 to the representatives. *See Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal.
16 1995); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23,
17 2015 (finding service award of \$15,000 to be “fair and reasonable”).

18 The requested Plaintiff’s Class Representative Service Payment in the amount of
19 \$7,500.00 to named Plaintiff Hector Almazan is fair and appropriate based on the substantial
20 amount of effort Plaintiff invested into bringing this suit and assisting Counsel on this Action.
21 Davis Decl. ¶¶ 98-103; *see* Declaration of Hector Almazan in Support of Motion for Final
22 Approval (“Almazan Decl.”) ¶¶ 3-18. Throughout the litigation, Plaintiff spent substantial time
23 and effort searching for relevant documents, speaking with Class Counsel, and providing the facts
24 and evidence necessary to prove the allegations. Plaintiff actively attempted to obtain information
25 that would benefit the Settlement Class. Prior to signing the Settlement Agreement, Plaintiff
26 reviewed the Settlement Agreement, asked questions, and discussed the settlement with Class
27 Counsel. The information and documentation provided by Plaintiff was instrumental in
28 establishing the wage and hour violations alleged in this Action, and the recovery provided for in

1 the Settlement Agreement would have been impossible to obtain without their participation. These
2 services unquestionably merit the requested Class Representative Service Payment. Davis Decl. ¶
3 99.

4 At the same time, Plaintiff faced many risks in adding himself as class representatives in
5 this matter. Plaintiff faces actual risks with their future employment, as putting himself on public
6 record in an employment lawsuit could also very well affect his likelihood for future
7 employment. Plaintiff also placed himself at substantial risk because if Defendant was to prevail
8 in this Action, he could be liable for Defendant's attorney fees under California Labor Code §
9 218.5. Davis Decl. ¶¶ 100-101; Almazan Decl. ¶ 16. Despite this, Plaintiff still chose to bring this
10 litigation on behalf of others and have put those interests ahead of his own.

11 As a result of Named Plaintiff's service, 886 Class Members have the opportunity to
12 participate in a Settlement, reimbursing them for wage violations they may have never known
13 about on their own or been willing to pursue on their own. If these Class Members would have
14 each tried to pursue their legal remedies on their own, that would have resulted in each having to
15 expend a significant amount of their own monetary resources and time, which were obviated by
16 Plaintiff putting himself on the line on behalf of these other Class Members. Davis Decl. ¶ 102.

17 In the final analysis, the Settlement would not have been possible without the aid of
18 Plaintiff, who put his own time and effort into this litigation, sacrificed the value of his own
19 individual claims, and placed himself at risk for the sake of the class members. Service Payments
20 of \$7,500.00 to Named Plaintiff Hector Almazan – less than 1% of the Gross Settlement Amount
21 – is an extremely small amount of money to recognize Plaintiff's active participation in this
22 lawsuit. *See In re Online DVD Rental*, 779 F.3d 934, 947-48 (9th Cir. 2014) (approving incentive
23 award 417 times larger than individual payments).

24 **VII. PAYMENT TO THE SETTLEMENT ADMINISTRATOR**

25 The Settlement Agreement calls for the award of \$14,000.00 to the Settlement
26 Administrator, Apex Class Action Administrators, for the costs associated with administration of
27 the settlement. The Settlement Administrator is a necessary third-party who has performed
28 substantial services on behalf of the Class, and this payment of \$14,000.00 should be approved by

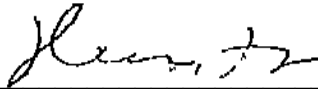
1 the Court. Davis Decl. ¶ 104; Apex Decl. ¶ 18.

2 **IX. CONCLUSION**

3 For the foregoing reasons, Plaintiff respectfully requests that the Court grant the Motion for
4 Final Approval and enter Judgment in this case pursuant to the terms of the Settlement.

5 DATED: May 2, 2025

PROTECTION LAW GROUP, LLP

7 By: 

8 Heather Davis
9 Amir Nayebdadash
10 Brendan J. Burton
11 Shadi Sahebghalam
12 *Attorneys for Plaintiff*
13 HECTOR ALMAZAN
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