

Eric K. Yaeckel [CSB No. 274608]  
[yaeckel@sullivanlawgroupapc.com](mailto:yaeckel@sullivanlawgroupapc.com)  
Ryan T. Kuhn [CSB No. 324538]  
[ryan@sullivanlawgroupapc.com](mailto:ryan@sullivanlawgroupapc.com)  
Karoline D. Kitlowski [CSB No. 347692]  
[karoline@sullivanlawgroupapc.com](mailto:karoline@sullivanlawgroupapc.com)

**SULLIVAN & YAECKEL LAW GROUP, APC**  
2330 Third Avenue  
San Diego, California 92101  
(619) 702-6760 \* (619) 702-6761 FAX

Attorneys for Plaintiff JAMES PACKES, in a Representative capacity only, and on behalf of other members of the general public similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ORANGE**

JAMES PACKES, in a Representative capacity only, and on behalf of other members of the general public similarly situated,

Plaintiff,

v.

SCHOOL OF ROCK LLC, a Delaware Limited Liability Company; and DOES 1-10, inclusive

Defendants

CASE NO. 30-2021-01217507-CU-OE-CXC

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF (1) CLASS ACTION SETTLEMENT; (2) ATTORNEYS' FEES AND COSTS; and (3) CLASS REPRESENTATIVE AWARD**

Date: May 5, 2023

Time: 10:00 a.m.

Dept.: CX105

Judge: Hon. Randall J. Sherman

**TABLE OF CONTENTS**

|      |                                                                                                                                          |    |
|------|------------------------------------------------------------------------------------------------------------------------------------------|----|
| I.   | Summary of Application.....                                                                                                              | 1  |
| II.  | Updated Factual and Procedural History.....                                                                                              | 1  |
| III. | Settlement Terms.....                                                                                                                    | 2  |
| 1.   | Contingent Nature of the Settlement.....                                                                                                 | 2  |
| 2.   | Description of the Settlement Classes.....                                                                                               | 2  |
| 3.   | Appointment of Settlement Claims Administrator.....                                                                                      | 3  |
| 4.   | Scope of the Release.....                                                                                                                | 3  |
| 5.   | Cash Payment and Allocation.....                                                                                                         | 4  |
| 6.   | Contingent Costs.....                                                                                                                    | 4  |
| IV.  | Controlling Law.....                                                                                                                     | 5  |
| A.   | Final Approval of Class Action Settlements.....                                                                                          | 5  |
| B.   | Attorneys' Fees.....                                                                                                                     | 6  |
| C.   | Class Representative Enhancement.....                                                                                                    | 7  |
| V.   | Argument.....                                                                                                                            | 8  |
| A.   | The Proposed Settlement Is Made in Good Faith.....                                                                                       | 8  |
| 1.   | Strength of Plaintiffs' Case and Investigation and Discovery .....                                                                       | 8  |
| 2.   | The Risk, Expense, Complexity, and Likely Duration of Further Litigation .....                                                           | 9  |
| 3.   | The Experience and Views of Counsel.....                                                                                                 | 9  |
| 4.   | Presence of a Governmental Actor.....                                                                                                    | 10 |
| 5.   | Reaction of the Class Members to the Proposed Settlement.....                                                                            | 10 |
| B.   | The Requested Attorney's Fees and Costs Are Reasonable.....                                                                              | 10 |
| 1.   | The Contingent Nature of the Fee Agreement, and Inherent Risk Therein, Supports<br>Awarding a <i>Percentage of the Recovery</i> .....    | 11 |
| 2.   | The Continuing Obligation to Devote Time and Effort to the Litigation .....                                                              | 12 |
| 3.   | The Extent to which the Litigation Precluded Other Employment .....                                                                      | 12 |
| 4.   | The Experience, Reputation, and Ability of the Attorneys who Performed the Services,<br>and the Skill They Displayed in Litigation ..... | 12 |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5. The Amount Involved and the Results Obtained on Behalf of the  
Class.....13

6. A Percentage of the Common Fund Award is Proper .....13

7. The Lodestar Cross-Check .....14

8. The Lodestar Multiplier .....15

9. The Amount of Costs .....16

C. The Requested Class Representative Enhancement Is Reasonable .....16

VI. Conclusion.....17

## TABLE OF AUTHORITIES

### **CASES**

|                                                                                                              |        |
|--------------------------------------------------------------------------------------------------------------|--------|
| <i>Beasley v. Wells Fargo Bank</i><br>(1991) 235 Cal.App.3d 1407, 1419 .....                                 | 11     |
| <i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i><br>(S.D.N.Y. 1979) 480 F.Supp. 1195 .....      | 13     |
| <i>Behrens v. Wometco</i><br>(S.D. Fla 1988) 118 F.R.D. 534,549.....                                         | 16     |
| <i>Boeing v. Van Gemert</i><br>(1980) 444 U.S. 472, 478.....                                                 | 11,13  |
| <i>Brinker Rest. v. Superior Court</i><br>(2012) 53 Cal. 4th 1004, 1051 .....                                | 8      |
| <i>Carrington v. Starbucks Corp.</i><br>(2018) 30 Cal.App.5th 504 .....                                      | 12     |
| <i>Cellphone Termination Fee Cases</i><br>(2010) 186 Cal.App.4th 1380, 1394-1395.....                        | 7      |
| <i>Chavez v. Netflix, Inc.</i><br>(2008) 162 Cal. App. 4th 43.....                                           | 5,7,13 |
| <i>Clark v. Am. Residential Servs. LLC</i><br>(2009) 175 Cal.App.4th 785, 804.....                           | 7      |
| <i>Coalition for Los Angeles County Planning v. Board of Supervisors</i><br>(1977) 76 Cal. App.3d 241.....   | 15     |
| <i>Donohue v. AMN Services, LLC</i><br>11 Cal.5th 58 (2021).....                                             | 12     |
| <i>Downey Cares v. Downey Community Development Commission</i><br>(1987) 196 Cal. App. 3d 983.....           | 15     |
| <i>Dunk v. Ford Motor Co.</i><br>(1996) 48 Cal. App. 4th 1794.....                                           | 5,6    |
| <i>Estate of Stauffer</i><br>(1959) 53 Cal.2d 124, 132.).....                                                | 12     |
| <i>Golba v. Dick's Sporting Goods, Inc.</i><br>(2015) 238 Cal.App.4th 1251, 1270 .....                       | 7      |
| <i>Guippone v. BHS&amp;B Holdings, LLC</i><br>2011 U.S. Dist. LEXIS 126026 *20 (S.D.N.Y. Oct. 28, 2011)..... | 16     |
| <i>Hernandez v. Vitamin Shoppe Indust., Inc.</i><br>(2009) 174 Cal. App. 4th 1441.....                       | 6      |

|    |                                                                          |       |
|----|--------------------------------------------------------------------------|-------|
| 1  | <i>In re Ampicillin Antitrust Litig.</i>                                 |       |
| 2  | (D.D.C. 1981) 526 F.Supp.494 .....                                       | 13    |
| 3  | <i>In re Mego Fin. Corp. Sec. Litig.</i>                                 |       |
| 4  | (9th Cir. 2000) 213 F.3d 454, 463 .....                                  | 7     |
| 5  | <i>In re Microsoft I-V Cases</i>                                         |       |
| 6  | (2006) 135 Cal. App. 4th 706.....                                        | 5,6   |
| 7  | <i>In re Omnivision Technologies, Inc.</i>                               |       |
| 8  | (N.D. Cal. 2008) 559 F.Supp.2d 1036,1043 .....                           | 10    |
| 9  | <i>In re Washington Public Power Supply System Securities Litigation</i> |       |
| 10 | (9th Cir. 1994) 19 F.3d 1291, 1299. ....                                 | 11    |
| 11 | <i>Jordan v. California Dep't of Motor Vehicles</i>                      |       |
| 12 | (2002) 100 Cal.App.4th 431, 446 .....                                    | 11,12 |
| 13 | <i>Kern River Public Access Committee v. City of Bakersfield</i>         |       |
| 14 | (1985) 170 Cal. App. 3d 1205.....                                        | 15    |
| 15 | <i>Kullar v. Foot Locker Retail, Inc.</i>                                |       |
| 16 | (2008) 168 Cal. App. 4th 116.....                                        | 5,8   |
| 17 | <i>Laffitte v. Robert Half Intern. Inc.</i>                              |       |
| 18 | (2016) 1 Cal.5th 480, 503 .....                                          | 6,13  |
| 19 | <i>Lealaov. Beneficial California, Inc.</i>                              |       |
| 20 | (2000) 82 Cal.App.4th 51 .....                                           | 6,13  |
| 21 | <i>Rabin v. Concord Assets Group, Inc.</i>                               |       |
| 22 | (S.D.N.Y. 1991) Fed. Sec. L. Rep. (CCH) par. 96471 at 92,091.....        | 16    |
| 23 | <i>Rievman v. Burlington Northern Railroad Co.</i>                       |       |
| 24 | (S.D.N.Y. 1987) 118 F.R.D. 29,35.....                                    | 16    |
| 25 | <i>Ross v. A.H. Robins</i>                                               |       |
| 26 | (S.D.N.Y. 1988) 700 F. Supp. 682, 684 .....                              | 10    |
| 27 | <i>Sternwest Com. v. Ash</i>                                             |       |
| 28 | (1986) 183 Cal. App. 3d 74.....                                          | 15    |
|    | <i>Thurman v. Bayshore Transit Management, Inc.</i>                      |       |
|    | (2012) 203 Cal.App.4th 1112, 1135 .....                                  | 9     |
|    | <i>Winslow v. Harold G. Ferguson Corp.</i>                               |       |
|    | (1944) 25 Cal.2d 274, 284.....                                           | 13    |
|    | <b>STATUTES, RULES AND REGULATIONS</b>                                   |       |
|    | Cal. Bus. & Prof. Code § 17200, <i>et seq.</i> .....                     | 4     |
|    | Cal. Code Civ. Proc. § 384 .....                                         | 4     |
|    | Cal. Lab. Code § 226.7 .....                                             | 4     |

|   |                                            |   |
|---|--------------------------------------------|---|
| 1 | Cal. Lab. Code § 2698 <i>et seq.</i> ..... | 4 |
|---|--------------------------------------------|---|

|   |              |  |
|---|--------------|--|
| 2 | <b>OTHER</b> |  |
|---|--------------|--|

|   |                       |    |
|---|-----------------------|----|
| 3 | 1 Newberg §14.03..... | 13 |
|---|-----------------------|----|

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Plaintiff JAMES PACKES (“Plaintiff”), in a Representative Capacity only, respectfully  
2 submits his Application for Final Approval of a PAGA Representative Settlement. This request is  
3 **unopposed**. The LWDA was timely notified of this proposal, and does **not** object.

#### 4 **I. SUMMARY OF APPLICATION**

5 This motion seeks final approval of a “wage and hour” class action settlement. Plaintiff  
6 JAMES PACKES, in a Representative capacity only, and on behalf of other members of the general  
7 public similarly situated, (collectively “Plaintiffs”) have sued on behalf of a class of nonexempt  
8 employees who worked for the named Defendant during the operative class period, set forth herein.

9 Following the distribution of the approved Notice to the class, the proposed final settlement  
10 figures are as follows:

- 11 • Final size of potential class: **125 Participating Class Members**
- 12 • Objections to Settlement: **Zero (0)**
- 13 • Opt-Outs: **One (1) (0.79%)**
- 14 • Gross settlement amount (“GSA”): **\$240,000.00**
- 15 • Claims administration: **\$4,275.05**
- 16 • Costs/expenses of litigation: **\$9,165.17**
- 17 • LWDA payment: **\$18,000.00** (75% Share of \$24,000.00 allocation)
- 18 • Attorney's fees: **\$80,000.00** (1/3 of GSA)
- 19 • Class representative incentive: **\$5,000.00**
- 20 • Net Settlement Fund **\$124,000.00**

21 **Please Note:** there have been **no (zero) objections** to this proposed settlement. The *average*  
22 gross payment to each participating Class Member based on the above figures is **\$976.00** which does  
23 not account for the fact that certain class members will receive more or less than an “average” share,  
24 depending on the length of time each worked for Defendants during the class period. The highest  
25 estimated payment will be \$3,284.40 and the lowest estimated payment will be \$38.16. (Please see the  
26 declaration of Settlement Administrator Jeffrey Johnson at ¶ 16.)

#### 27 **II. UPDATED FACTUAL AND PROCEDURAL HISTORY**

28 Should the Court deem it relevant, a much more detailed procedural history of the case, and

summary of all claims, was already set forth in Plaintiff's original Motion for Preliminary Approval. (ROA # 31 at § III.) The Court **granted** Preliminary Approval of the parties' original settlement on January 6, 2023. (ROA # 71; and the Declaration of Eric K. Yaeckel ISO Plaintiff's Motion for Preliminary Approval..)

After conducting extensive formal and informal discovery, the parties attended a highly adversarial mediation, presided over by a well respected "wage and hour" mediator (Mike Young). The parties spent several additional months negotiating all final settlement terms and obtaining preliminary approval from the Court. (*Id.*)

Most importantly for purposes of final approval, **zero** employees (out of **126 individuals**) objected to the terms of this settlement. Only one employee (less than 1 %) have opted out. (Johnson decl. ¶¶ 11-12.) Thus the class overwhelmingly supports the proposed settlement.

The parties Joint Stipulation of Class and PAGA Action (herein referred to in this motion as "the Agreement") contains the terms of the class action settlement and is already on file with the Court. (ROA # 60: **Exhibit 1** thereto.) For ease of reference, the Agreement will be cited to herein again as Agreement or Exhibit 1.)<sup>1</sup>

### III. SETTLEMENT TERMS

The Agreement includes the following key terms:

#### 1. Contingent Nature of the Settlement

The parties entered into the Agreement exclusively for the purpose of resolving the action and facilitating the negotiated settlement. Should the Court, for any reason, not finally approve the Agreement, or if the Agreement is terminated for any reason, then the Agreement will be null and void and this action will revert to its status with respect to any and all matters as they existed prior to the parties signing the Agreement. (**Ex. 1** at ¶ 5).

#### 2. Description of the Settlement Classes

Solely for the purposes of the Agreement, the parties have agreed that the term "Class

---

<sup>1</sup> This Memorandum incorporates by reference the definitions in the Agreement and the terms used herein are intended to have the same meaning as set forth in the Agreement.

Member” is defined as:

All current and former hourly non-exempt persons employed by Defendant School of Rock, LLC and SOR Schools VI, LLC, in the State of California between April 1, 2018 through the date of preliminary approval of the settlement.  
(**Exhibit 1** at ¶ 6).

Class Notices were sent to 126 individuals, as determined by Defendants’ employment records. (Johnson decl. ¶ 6(a).) One individual has opted out of the litigation. (Johnson decl. ¶ 11.) **No (zero)** Class Members have objected to the proposed settlement. (Johnson decl. ¶ 12.) Following the Notice, there are a total of 125 total class members who will all receive a share of the settlement proceeds. (Johnson decl. ¶ 13.)

### **3. Appointment of Settlement Claims Administrator**

CAC Services Group, LLC. (“CAC”) was used as the “Settlement Administrator” for purposes of providing the Notice, and its instructions, to Settlement Class Members, issuing all payments pursuant to the Agreement, and to track all opt-outs and objections to the settlement.

As detailed in the accompanying declaration, CAC successfully completed all steps of the Notice process. (See Johnson decl. ¶¶ 4-14.)

**Please Note:** When the parties originally sought a bid from the settlement administrator in this case, it was estimated that there were only approximately 60 class members. As noted in this motion there are actually 126 individuals (1 of whom opted-out) within the settlement class definition. Plaintiff was in possession of the correct workweek and pay period data all along, so this discrepancy did not impact Plaintiff’s valuation of the claims. However, it did cause the settlement administrators costs and fees to exceed the original estimate of \$3,000 provided at the time of preliminary approval. (Yaeckel decl. ¶ 33.) The settlement administrator’s final fees and costs are \$4,275.05, as detailed in the declaration of Mr. Johnson. (Johnson decl. ¶ 17, **Ex. 2** thereto).

### **4. Scope of the Release**

For purposes of the Agreement, Participating Class Members release any claims and resultant

1 penalties and damages, arising from or related to the claims litigated in the Lawsuit against School of  
2 Rock, during the Class Period, based upon the following categories of allegations in the operative  
3 pleadings: Failure to pay minimum wages and overtime wages; failure to timely pay wages due at  
4 termination, failure to provide accurate itemized employee wage statements, rest break liability under  
5 § 226.7, meal period liability under Labor Code § 226.7, violations of Business and Professions Code  
6 § 17200, *et seq.* Based on the foregoing facts and claims; penalties pursuant to PAGA (Labor Code  
7 § 2698 *et seq.* (See **Exhibit 1** at ¶ 71.)

#### 8 **5. Cash Payment and Allocation**

9 The Agreement provides for an automatic cash payment to the members of the class who do  
10 not submit valid requests for exclusion. The settlement is non-reversionary, in that all of the Net  
11 Settlement Amount, after all costs and fees are deducted, will be paid to the participating Class  
12 Members.  
13

14 Based on the final counts after the notice period, participating Class Members will be entitled  
15 to an average share of approximately **\$976.00**. (Johnson decl. ¶ 16.) The actual amounts received will  
16 vary based on length of employment during the class period. The highest estimated payout is \$3,284.40  
17 and the lowest amount is \$38.16. (Johnson decl. ¶ 16.)

18 The settlement checks returned as undeliverable and those settlement checks remaining  
19 un-cashed for more than one hundred eighty (180) calendar days after issuance will be tendered to  
20 Legal Aid for Work. (**Ex. 1** at ¶ 58.) The parties selected Legal Aid for Work as it appears to be a  
21 competent non-profit organization in good standing that satisfied all requirements under California  
22 Code of Civil Procedure § 384. The parties do not have any affiliation or involvement with this cy pres  
23 recipient. (**Ex. 1** at ¶ 58.)

#### 24 **6. Contingent Costs**

25 Defendant agrees to pay Eighty Thousand Dollars (\$80,000.00) in attorneys' fees, which is  
26 thirty-three and one-third (33 1/3%) of the total settlement, and up to Ten Thousand Dollars  
27 (\$10,000.00) in litigation costs. (See **Exhibit 1** at ¶ 42). Plaintiff's actual costs of litigation are  
28

1 \$9,165.17 as detailed below.

2 For costs incurred in administering the settlement process, Defendants will pay the actual  
3 costs, which were originally estimated not to exceed \$3,000.00. However, as detailed above the  
4 settlement administrator's final fees and costs are \$4,275.05, as detailed in the declaration of Mr.  
5 Johnson. (Johnson decl. ¶ 17, **Ex. 2** thereto; Yaeckel decl. ¶ 33.)

6 Defendant also agrees to allocate Twenty Four Thousand Dollars (\$24,000.00) to Plaintiffs'  
7 PAGA claims with 75% of the amount, or \$18,000.00, being paid to the LWDA, and 25%, or  
8 \$6,000.00, being distributed amongst the class members. (*See Exhibit 1* at ¶ 45.)

9  
10 Defendants also agree to pay Plaintiff Five Thousand Dollars (\$5,000.00) as an enhancement  
11 award in consideration for their service as Class Representatives. (**Ex. 1** at ¶ 1.) The enhancement  
12 award was decided pursuant to good faith negotiations and is intended to recognize that it was the class  
13 representative who initiated the lawsuit, initiated the PAGA claims, provided critical documents and  
14 witnesses to his attorneys, and worked with his attorney to propound and prepare written discovery,  
15 all in an effort to obtain moneys allegedly owed not only to himself, but to all other employees.

#### 16 **IV. CONTROLLING LAW**

17 The following facts and law support this undisputed request.

##### 18 **A. FINAL APPROVAL OF CLASS ACTION SETTLEMENTS**

19 The trial court has broad discretion to determine whether a class action settlement is fair and  
20 reasonable. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.

21 Fairness is presumed where (1) the settlement is reached through arm's-length bargaining; (2)  
22 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel  
23 is experienced in similar litigation; and (4) the percentage of objectors is small. *Chavez v. Netflix, Inc.*,  
24 (2008) 162 Cal.App.4th 43, 52; *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794, 1802. But, even  
25 where it appears the settlement is fair, the court must still determine whether the settlement should be  
26 approved after considering "the strengths and weaknesses of the claims and risks of the particular  
27 litigation." *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 129. It considers: (i) the  
28

1 strength of the plaintiff's case; (ii) the risks, expense, complexity and likely duration of further  
2 litigation; (iii) the risk of maintaining class action status throughout the trial; (iv) the amount offered  
3 in settlement; (v) the extent of discovery completed; (vi) the stage of the proceedings; (vii) the  
4 experience and views of counsel; (viii) the presence of a governmental participant; and (ix) any  
5 reaction of putative class members. *Dunk, supra*, 48 Cal.App.4th, at 1800-1801; *In re Microsoft*,  
6 *supra*, 135 Cal.App.4th, at 723.

7 The court should approve a class action settlement when the settlement is fair and falls "within  
8 the range of reasonableness." *Hernandez v. Vitamin Shoppe*, (2009) 174 Cal.App.4th 1441, 1446.

## 9 **B. ATTORNEYS' FEES**

10 The California Supreme Court has recently determined that the percentage of the benefit,  
11 ("percentage method") is proper for determining a reasonable attorney fee award in an employment  
12 class action case. *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480.

13 The California Supreme Court's rationale was as follows:

14 we clarify today that use of the percentage method to calculate a fee in a common fund  
15 case, where the award serves to spread the attorney fee among all the beneficiaries of  
16 the fund, does not in itself constitute an abuse of discretion. We join the overwhelming  
17 majority of federal and state courts in holding that when class action litigation  
18 establishes a monetary fund for the benefit of the class members, and the trial court in  
19 its equitable powers awards class counsel a fee out of that fund, the court may  
20 determine the amount of a reasonable fee by choosing an appropriate percentage of the  
21 fund created. The *recognized advantages* of the percentage method—including relative  
22 ease of calculation, alignment of incentives between counsel and the class, a better  
23 approximation of market conditions in a contingency case, and the encouragement it  
24 provides counsel to seek an early settlement and avoid unnecessarily prolonging the  
25 litigation (See pt. I, ante; *Lealao, supra*, 82 Cal.App.4th at pp. 48–49, 97 Cal.Rptr.2d  
26 797; *Rawlings v. Prudential-Bache Properties, Inc.*, *supra*, 9 F.3d at p.  
27 516)—**convince us the percentage method is a valuable tool that should not be  
28 denied our trial courts.**

*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503 (emphasis added).

25 The Court also determined that while permissible, a lode-star "cross check" of the percentage  
26 method was **not** required of California's trial courts. *Id.* at 506.

27 In fact the *Laffitte* Court further noted how advocating a lodestar, over a percentage of the  
28 recovery, creates perverse litigation incentives:

Critics of the lodestar method note, for example, the difficulty in applying the method and cite the **undesirable incentives created by that approach**—i.e., a financial **incentive to extend the litigation so that the attorneys can accrue additional hours** (and thus, additional fees). Moreover, some courts and commentators have criticized the lodestar method because **it gives counsel less of an incentive to maximize the recovery** for the class.

*Id.* at 494 (emphasis added).

Finally, "regardless whether the percentage method or the lodestar method is used, **fee awards in class actions average around one-third of the recovery.**" *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 66, n.11 (2008); See e.g., *In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 463 (upholding award of 33.3 percent of the settlement fund).

### C. CLASS REPRESENTATIVE ENHANCEMENTS

An incentive award may be appropriate to induce someone to serve as a class representative. In determining whether to make an incentive award, the court may consider (1) the risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit received by the class representative as a result of the litigation. *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1270 citing *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395.

Additional factors to consider include:

“‘the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.’ Federal district courts have identified other factors as well, including ‘the risk to the class representative in commencing suit, both financial and otherwise,’ ‘the notoriety and personal difficulties encountered by the class representative,’ the duration of the litigation, and ‘the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.’”

*Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 804.

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## V. ARGUMENT

### A. THE PROPOSED SETTLEMENT IS MADE IN GOOD FAITH

As specifically set forth below, the settlement meets all requirements for Court approval.

#### 1. Strength of Plaintiffs' Case and Investigation and Discovery

The most important factor courts consider when evaluating the fairness of the class action settlement is the strength of the plaintiff's case balanced against the amount offered in settlement. *Kullar, supra*, 168 Cal.App.4th at 130.

This is a class and representative action, with Plaintiffs' claims premised on Labor Code violations, established (in part) from Defendants' uniform policies. *Brinker Rest. v. Superior Court*, (2012) 53 Cal. 4th 1004, 1051 (holding that, where a company's uniform policy prohibits off-the-clock work, certification of claims for such off-the-clock work is inappropriate, especially where the court is merely "presented with anecdotal evidence of a handful of individual instances in which employees worked off the clock.") Thus, Plaintiff's counsels' approach was to investigate Defendants' uniform employment policies by, inter alia, scrutinizing putative class members' time and wage records, as well as Defendants' written meal and rest period policies.

As detailed more thoroughly in the preliminary approval motion, the mediation was proceeded by substantive exchanges of informal discovery to evaluate the parameters of both the class and PAGA claims. (See ROA # 31 at § II).

Plaintiff obtained all copies of Defendants' uniform time keeping, employee compensation, Meal Period, Rest Period, and reimbursement polices. In addition to Plaintiffs' time and wage records, Defendants also produced a large sampling of class member's records. Through this review, Plaintiffs' counsel was able to analyze and verify the following: the uniformity of Defendants' "timekeeping" and compensation practices and the average net effect it had on Defendants' nonexempt employees; the format and content of Defendants' itemized wage statements; the average rate of pay for Defendants' nonexempt employees; and the average number of apparent meal period violations per employee based on multiple sets of timekeeping data.

From this data, a detailed valuation of all claims was performed, and was presented to this

1 Court at the preliminary approval stage. (See ROA # 31 at § III and the declaration of Eric Yaeckel in  
2 Support of Preliminary Approval.)

3 While Plaintiffs maintained the claims were all viable, Plaintiffs (and their counsel) recognize  
4 there were substantial risks to proceeding on behalf of a class and representative group. Defendants  
5 presented several potentially valid defenses to certification, liability and mitigation of damages. (*Id.*)

## 6 **2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

7 Plaintiff's Counsel's effectiveness in prosecuting this case has translated into tangible monetary  
8 benefits for the Settlement Class Members in the following respects: **(a)** a guaranteed favorable result;  
9 **(b)** guaranteed monetary recovery over a reasonably short period of time, as opposed to possibly  
10 waiting additional years for a potentially worse result; and **(c)** significant savings in attorney's fees and  
11 costs, which would have greatly increased had the case progressed through trial and possible appeals

12 If not for this settlement, any request by Plaintiffs to certify a class would have been heavily  
13 contested by Defendants. (See ROA # 31 at § VI).

14 Given the existence of viable defenses, for the vast majority of the class claims, it was unlikely  
15 that all class claims could have been certified and brought to trial. Therefore, this class action  
16 settlement is a superior result for both parties. In exchange for a full release, Class members are able  
17 to recover substantial monetary amounts *now*. Defendant is also able to "buy its peace" and avoid the  
18 costs of defending all future claims stemming from the same wage and hour issues in this case.

19 Regarding Plaintiff's PAGA representative claims, there is also a substantial risk that Plaintiff  
20 would either fail to obtain a favorable judgment on one or more of these claims, or that a favorable  
21 award on one or more PAGA claims can be reduced. *See Thurman v. Bayshore Transit Mgmt., Inc.*,  
22 (2012) 203 Cal.App.4th 1112, 1135 (holding the Superior Court may "mitigate" PAGA penalties, even  
23 after a finding of liability.)

## 24 **3. The Experience and Views of Counsel**

25 Class Counsel has considerable experience in wage and hour and class action litigation. Mr.  
26 William Sullivan has over 29 years of experience, 28 years of which has been devoted to both  
27 prosecuting and defending class action litigation. Mr. Eric Yaeckel has over 12 years of experience  
28 as an attorney who is primarily engaged in prosecuting class and representative actions. (Yaeckel decl.

¶¶ 3-10.)

Based on a detailed analysis of all the claims and the risks involved in continuing litigation, class counsel submits the \$240,000.00 Gross Settlement Fund represented a fair, and more than reasonable, settlement. (Yaeckel decl. ¶¶ 3-11.)

#### **4. Presence of a Governmental Actor**

Although the State is not directly involved in this action, Plaintiff "stands in the shoes" of the Labor and Workforce Development Agency ("LWDA") by bringing a PAGA action. Consideration has been made to compensate to Labor Workforce Development Agency ("LWDA") in the amount of \$18,000.00 (which is the LWDA's 75% share of a \$24,000.00 allocation).

The LWDA was notified and declined to prosecute the claims itself. Counsel for the parties believe this is a fair, reasonable, and adequate allocation. (Yaeckel decl. ¶ 11.) The LWDA was also served with copies of the Settlement and Preliminary Approval Motion and has not objected or responded to date. (*Id.*) They have also been served with the notice of this motion and all supporting documents. (See concurrently filed Proof of Service.) Counsel will submit a declaration updating the Court should the LWDA provide any response.

#### **5. Reaction of the Class Members to the Proposed Settlement**

A total of 126 members of the settlement class were notified and only one (1), or 0.79%, members opted out of the class. (Johnson decl. ¶¶ 6, 10, 11.)

Perhaps most importantly, **there have been No (Zero) objections to the terms of the proposed settlement.** (Johnson decl. ¶ 12.)

"By any standard, the lack of objection of the Class Members favors approval of the Settlement." *In re Omnivision Technologies, Inc.*, (N.D. Cal. 2008) 559 F.Supp.2d 1036,1043; see also *Ross v. A.H. Robins*, (S.D.N.Y. 1988) 700 F. Supp. 682, 684 ["The absence of objectants may itself be taken as evidencing the fairness of a settlement."]

#### **B. THE REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE**

Plaintiffs will seek, and Defendants will not oppose, a payment of Eighty Thousand Dollars (\$80,000.00) in attorneys' fees, which is 1/3 of the total settlement, and actual litigation costs in the amount of \$9,165.17. These requests are unopposed. (See **Exhibit 1** at ¶ 42.)

1 As set forth below, the requested attorney's fees are inherently reasonable, on the basis of both  
2 a percentage of the recovery and a lodestar method, given the results obtained for the class. The  
3 following factors establish the reasonableness of the attorney's fees requested.

4 **1. The Contingent Nature of the Fee Agreement, and Inherent Risk Therein,**  
5 **Supports Awarding a Percentage of the Recovery**

6 In the instant matter, Plaintiffs' Counsel was retained on a contingency basis. (Yaeckel decl.  
7 ¶ 14.) A percentage fee of 33 1/3 % (thirty-three and one third percent) was freely negotiated. (*Id.*) As  
8 part of the Agreement, Counsel was required to continue the prosecution of the matter regardless of  
9 the outcome of the preliminary motions (i.e. class certification.) (*Id.*)

10 There is an **established practice** in the private legal market to reward attorneys for taking the  
11 risk of non-payment by paying them a **premium over their normal hourly rates** for winning  
12 contingency cases. *In re Washington Public Power Supply System Securities Litigation* (9th Cir. 1994)  
13 19 F.3d 1291, 1299. If attorneys' efforts create a benefit for others in addition to their own client, the  
14 court is empowered to award fees from that fund. *Boeing v. Van Gemert* (1980) 444 U.S. 472, 478.

15 The rationale for fee enhancement in contingency cases has been explained as follows:

16 'A contingent fee must be higher than a fee for the same legal services paid as they  
17 are performed. **The contingent fee compensates the lawyer not only for the legal  
18 services he renders but for the loan of those services. The implicit interest rate  
19 on such a loan is higher because the risk of default (the loss of the case, which  
20 cancels the debt of the client to the lawyer) is much higher than that of  
21 conventional loans.'** (Prosner, *Economic Analysis of Law* (4th ed.1992) pp. 534,  
22 567.) 'A lawyer who both bears the risk of not being paid and provides legal  
23 services is not receiving the fair market value of his work if he is paid only for  
24 the second of these functions. If he is paid no more, competent counsel will be  
25 reluctant to accept fee award cases.' (Leubsdorf, *The Contingency Factor in  
26 Attorney Fee Awards* (1981) 90 Yale L.J. 473, 480; see also Rules Prof. Conduct,  
27 rule 4-200(B)(9) [recognizing the contingent nature of attorney representation is an  
28 appropriate component in considering whether a fee is reasonable]; ABA Model  
Code Prof. Responsibility, DR 2-106(B)(8) [same]; ABA Model Rules Prof.  
Conduct, rule 1.5(a)(8). **Such fee enhancements are intended to compensate for  
the risk of loss generally in contingency cases as a class.**

*Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1419 (disapproved on other grounds.)

25 The percentage of the fund approach also sets expectations and incentivizes counsel in taking  
26 on the risk of a contingency case:

27 The bases of the equitable rule which permits surcharging a common fund with the  
28 expenses of its protection or recovery, including counsel fees, appear to be these:  
fairness to the successful litigant, who might otherwise receive no benefit because his  
recovery might be consumed by the expenses; correlative prevention of an unfair

1 advantage to the others who are entitled to share in the fund and who should bear their  
2 share of the burden of its recovery; **encouragement of the attorney for the**  
3 **successful litigant, who will be more willing to undertake and diligently**  
4 **prosecute proper litigation for the protection or recovery of the fund if he is**  
5 **assured that he will be promptly and directly compensated should his efforts be**  
6 **successful.**

7 *Jordan v. California Dep't of Motor Vehicles* (2002) 100 Cal.App.4th 431, 446 (with emphasis added)  
8 citing *Estate of Stauffer* (1959) 53 Cal.2d 124, 132.)

9 As a result the percentage of the recovery, routinely approved in California at 33 & 1/3 percent,  
10 properly incentivizes and awards counsel for diligently pursuing this matter in the face of numerous  
11 obstacles to both certification and liability.

## 12 **2. The Continuing Obligation to Devote Time and Effort to the Litigation**

13 Since the tentative agreement, Plaintiff's Counsel has had to devote considerable time to  
14 maintain the litigation, achieve Court approval for the proposed settlement, and assist the proposed  
15 Class Members. (Yaeckel decl. ¶ 15.)

## 16 **3. The Extent to which the Litigation Precluded Other Employment**

17 Plaintiff's counsel was precluded from accepting other employment and clients due to the  
18 necessity of maintaining the prosecution of the instant matter and also precluded them from bringing  
19 clients to the firm. (Yaeckel decl. ¶ 16.)

## 20 **4. The Experience, Reputation, and Ability of the Attorneys who Performed the** 21 **Services, and the Skill They Displayed in Litigation**

22 Plaintiff's counsel, William B. Sullivan, has been a California-licensed attorney for  
23 approximately 29 years. William B. Sullivan has approximately 28 years of experience in "class action"  
24 litigation, both as plaintiff and defense counsel. (Yaeckel decl. ¶ 3.) Mr. Yaeckel has over 12 years  
25 experience prosecuting class and representative actions on behalf of California Employees. (Yaeckel  
26 decl. ¶ 4.) Class counsel are the attorneys of record in a matter very recently (and favorably) decided  
27 before the California Supreme Court titled *Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021). The  
28 *Donohue* matter is a certified class and PAGA action. (Yaeckel decl. ¶ 5.) Plaintiff's counsel, are  
currently lead counsel on approximately 30 employment "wage and hour" claims with class action, or  
representative action allegations. (Yaeckel decl. ¶ 6.)

Plaintiff's counsel have recent (and successful) Trial experience in "Wage and Hour" cases.

1 In a recent successful PAGA trial, before the Hon. Katherine Bacal, Plaintiff's counsel was awarded  
2 their full requested attorneys fees and the hourly rates billed were all approved. See *Carrington v.*  
3 *Starbucks Corp.* San Diego Superior Court, Case No. 37-2014-00018637-CU-OE-CTL and published  
4 appellate opinion at 30 Cal.App.5th 504. (Yaeckel decl. ¶¶ 8-9.)

5 Based on said experience, it is the opinion of counsel that this settlement represents a fair and  
6 adequate payment. (Yaeckel decl. ¶ 7.)

7 **5. The Amount Involved and the Results Obtained on Behalf of the Class**

8 This is not a "coupon" class action case. (Yaeckel decl. ¶ 17.) The Class is set to receive  
9 significant monetary benefits they would not have received if Class Counsel did not act. (*Id.*)  
10 Participating members of the Class will receive an average of \$976.00, with some class members  
11 receiving as much as \$3,284.40. (Johnson decl. ¶ 16.)

12 **6. A Percentage of the Common Fund Award is Proper**

13 The controlling law, is more extensively set forth above. See Section IV(B) above.

14 Plaintiff's counsel submits that the request for 33 & 1/3 % in attorneys fees from the "common  
15 fund" settlement is proper. *Laffitte v. Robert Half Intern. Inc.*, (2016) 1 Cal.5th 480, 503, 506.  
16 Historically, courts have awarded fees as high as fifty percent (50%) of the common fund, depending  
17 on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C.  
18 1981) 526 F.Supp.494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million settlement  
19 fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195  
20 (awarding approximately 53% of the settlement fund as attorney fees).

21 California Courts routinely approve class action attorneys' fee awards "averag[ing] around  
22 one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court  
23 found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions).

24 Additionally, a common fund award is not dependent on a determination of the actual amount  
25 claimed out of the fund by those entitled-it is the creation of the fund that is the crucial fact. In *Winslow*  
26 *v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that "it is equitable that  
27 [the attorney's] compensation and expenses should come from the entire fund saved for all classes  
28 concerned before it is distributed." *Winslow v. Harold G. Ferguson Corp.* (1944) 25 Cal.2d 274, 284.

1 Likewise, *Lealao* expressly recognizes that “in a traditional common fund case, [a percentage-based  
2 fee] may be calculated on the basis of the total fund made available rather than the actual payments  
3 made to the class.” *Lealao*, *supra*, 82 Cal.App.4th at p. 51; *see also Boeing*, *supra*, 444 U.S. at p. 478  
4 (“a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or  
5 his client is entitled to a reasonable attorneys' fee from the fund as a whole”).

## 6           **7.       The Lodestar Cross-Check**

7           *If* deemed necessary, a “lodestar cross-check” of the settlement also confirms the propriety of  
8 the request.

9           As set forth in the attached Declaration of Eric K. Yaeckel, the actual lodestar attorney's fees  
10 incurred (to date) are estimated to amount to be approximately **\$72,82200**. The Attorney's fees are  
11 broken down as follows:

12           Mr. William Sullivan served as lead investigator and trial counsel, per the specific request of  
13 Plaintiff. (Yaeckel decl. ¶ 18(a).) The billing rate for Mr. William Sullivan is **\$660.00** per hour. (*Id.*)  
14 Over the course of the investigation (including pre-filing), Mr. William Sullivan has currently  
15 expended approximately **25.2** hours in the service of this action. **25.2** hours times **\$660.00** equals  
16 **\$16,632.00**. The work includes nearly all preliminary investigation and some client and Class  
17 interaction/meetings. (*Id.*) The preliminary investigation included the review and analysis of several  
18 documents. (*Id.*) During this time, Mr. Sullivan also investigated Defendant, its business practices, and  
19 any variations in Class Members' job duties and rates of pay. (*Id.*)

20           Mr. Eric Yaeckel, was the partner primarily assigned to oversee the “day to day” activity of the  
21 primary associates assigned to this case. The billing rate of Mr. Yaeckel is **\$540.00** per hour. (Yaeckel  
22 Decl. ¶18(b)). Mr. Eric Yaeckel has currently expended approximately **71.1** hours in the service of this  
23 action. **71.1** hours times **\$540.00** equals **\$38,394.00**. (*Id.*) Aside from supervising the Associates, this  
24 work includes attending hearings and most of the day to day communication with opposing counsel.  
25 Mr. Yaeckel also primarily handled the numerous exchanges between the mediator and Defense  
26 counsel to negotiate and finalize the settlement following the progress made at mediation. Mr. Yaeckel  
27 also undertook the review and drafting of all settlement documents and the preliminary and final  
28 approval motions. (*Id.*).

1 Mr. Ryan Kuhn, Ms. Katherine Dishongh, and (briefly) Ms. Karoline Kitlowski also served as  
2 Associate Attorneys assigned to the case. (Yaeckel decl. ¶19(c).) The associates' billing rate on this  
3 matter is **\$360.00** per hour. The associates expended approximately 42.3 hours in the service of this  
4 action. **42.3** hours times \$360.00 equals **\$15,228.00**. The work performed by the associates consisted  
5 of, for the most part, analysis of Defendants' documents and records, in preparation for mediation and  
6 a class certification motion. The associates were also assigned to discovery creation/review, the  
7 preparation of "meet and confer" letters and other contact with defense counsel, and the drafting and  
8 filing of numerous separate motions, including pleadings challenges and numerous different motions  
9 to compel discovery. The associates also provided an analysis of employment records to determine  
10 "commonality" and damages. (Yaeckel decl. ¶ 19(c).)

11 Based on past experience, it is expected our firm will incur at least an additional 5.0 hours in  
12 assisting Class Members on questions and issues regarding the settlement, meeting with Class  
13 Members (including on any late submissions), preparing for and attending the Final Approval hearing  
14 in this matter, and coordinating with the settlement administrator. 5.0 times \$540.00 equals **\$2,700.00**.  
15 (Yaeckel decl. ¶ 18(d).)

16 **Please Note:** the attorney fee rates sought here are also in line with (or are actually below) the  
17 rates that have been approved by trial courts in class action cases. (See Yaeckel decl. ¶¶ 19-22 and  
18 **Exhibit A** thereto).

19 The lodestar cross-check thus confirms that Plaintiff's fee request is fair and reasonable

20 **8. The Lodestar Multiplier**

21 Given the attorneys fees incurred – in the approximate amount of **\$72,822.00**– a very modest  
22 multiplier of approximately **1.1** is necessary for the full award requested by Plaintiff.

23 California courts and the Ninth Circuit hold that the trial court in determining whether to apply  
24 a multiplier should look at the case and its results as a whole. Historically, California courts have  
25 approved **multipliers of 1.5 to 4**. See *Coalition for Los Angeles County Planning v. Board of*  
26 *Supervisors*, (1977) 76 Cal. App. 3d 241, 251 (multiplier of 2+ ); *Kern River Public Access Committee*  
27 *v. City of Bakersfield*, (1985) 170 Cal. App. 3d 1205, 1228 (multiplier of 1.5); *Downey Cares v.*  
28 *Downey Community Development Commission*, (1987) 196 Cal. App. 3d 983, 994 (multiplier of 1.5);

1 *Sternwest Com. v. Ash*, (1986) 183 Cal. App. 3d 74, 75.

2 Furthermore, the Federal courts have applied multipliers ranging from 1.7 to 4.0, even when  
3 the class action involved relatively routine issues. See *Rabin v. Concord Assets Group, Inc.*, (S.D.N.Y.  
4 1991) Fed. Sec. L. Rep. (CCH) Par. 96,471 at 92, 091 (multiplier of 4.4); *Behrens v. Wometco*,  
5 (S.D.Fla 1988) 118 F.R.D. 534, 549 (multiplier of 3); *Rievman v. Burlington Northern Railroad Co.*,  
6 (S.D.N.Y. 1987) 118 F.R.D. 29, 35 (noting multiplier~ between 3 and 4.5 are common).

7 Here, the multiplier requested is within the range of what California and federal courts often  
8 apply in class action cases. Moreover, the results obtained here, versus the risk of a zero recovery,  
9 given the numerous asserted defenses, support this modest multiplier request. (Yaeckel decl. ¶ 23.)

10 Additionally, the settlement provides the class with a substantial monetary amount and the class  
11 strongly supports the fairness of the settlement, even after being notified of the requested attorneys'  
12 fee award (1 opt-out, **and 0 objections**). In the event the Court deems a lodestar analysis is necessary  
13 it will confirm that Plaintiff's fees are reasonable.

14 **9. The Amount of Costs**

15 Class Counsel has expended approximately \$9,165.17 in costs, including filing fees, mediation,  
16 copying and document preparation charges, legal research fees, and delivery/service fees. (Yaeckel  
17 decl. ¶ 20.) Defendant agreed not to oppose an amount of up to \$10,000.00 in costs. Accordingly,  
18 Plaintiff's counsel therefore seeks approval of the actual costs of \$9,165.17. (Yaeckel decl. ¶ 25.)

19 **C. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT IS REASONABLE**

20 Plaintiff requests an enhancement award of **\$5,000** to Mr. Packes (the named Plaintiff) for  
21 serving as the class representative. Defendants do **not** oppose this request. The class was notified and  
22 does **not** object.

23 A Plaintiff put their future employment prospects at risk by becoming a class representative as  
24 the fact that they filed a class action lawsuit "is searchable on the internet and may become known to  
25 prospective employers when evaluating" the employee as a candidate. *Guippone v. BH S&B Holdings,*  
26 *LLC*, 2011 U.S., Dist. LEXIS 126026, \*20 (S.D.N.Y. Oct. 28, 2011).

27 Plaintiff contributed extensive time and resources in the prosecution of this case. Plaintiff was  
28 able to provide information instrumental to the prosecution of this matter including identifying

1 numerous witnesses that could corroborate his claims. The plaintiff also assisted with reviewing and  
2 providing insight on Defendant's documents produced. (See Packes decl. ¶¶ 3-7.)

3 Moreover, by "sticking his neck out" as a Class Representative in a publicly filed lawsuit,  
4 Plaintiff took a substantial risk that may adversely impact his ability to work in this field in the future.

5 Any company who does a detailed background check, will be able to determine that Plaintiff  
6 asserted legal claims against his former employer. An entire industry exists that allows employers to  
7 run extensive background searches on potential employees. Companies who provide these services  
8 specifically highlight the fact that their services allows employers to weed out litigious employment  
9 candidates. (Yaeckel decl. ¶¶ 27-30.)

10 In addition, the Plaintiff's co-workers have all been notified of the lawsuit, so there is a large  
11 pool of peers who now know of each of them bringing claims against a former employer, which could  
12 also jeopardize future positions.

13 Plaintiff also risked personally owing a large cost award, into the tens of thousands of dollars,  
14 had his claims been unsuccessful. (See Packes decl. ¶ 8.)

15 Despite all the risks, Plaintiff, at all times remained committed to securing a monetary recovery  
16 on behalf of the entire class. (See Packes decl. ¶ 9.)

17 Accordingly, Plaintiff asks the Court to approve a class representative enhancement in the  
18 amount of \$5,000 to Mr. Packes.

## 19 **VI. CONCLUSION**

20 Based on the foregoing, Plaintiff respectfully request that this Court grant Plaintiff's Motion  
21 consistent with the accompanying proposed Order and Final Judgment.

22  
23 Dated: April 13, 2023

**SULLIVAN & YAECKEL LAW GROUP, APC**

24 *Eric Yaeckel*

25 \_\_\_\_\_  
26 Eric K. Yaeckel