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individually and on behalf of all other similarly situated

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

MARK D. TAFT, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

SALADINO'S INC., a California Corporation;
and DOES 1-50, inclusive,

Defendant.

CASE NO.: 34-2021-00304595

Hon. Jill Talley

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; ATTORNEYS' FEES,
COSTS, GENERAL RELEASE PAYMENT
AND ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
JAMES HAWKINS.**

Date: March 15, 2024

Time: 9:00 a.m.

Dept.: 23

1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**
2 **NOTICE IS HEREBY GIVEN** that on March 15, 2024 at 9:00 a.m. or as soon thereafter as the
3 matter may be heard in Department 27 of the above captioned Court, before the Honorable Jill Talley,
4 Plaintiff MARK D. TAFT (“Plaintiff”), by and through Plaintiff’s counsels of record, will and hereby
5 do move the Court for Final Approval of the Class Action and Private Attorneys General Act
6 Settlement, awarding Class Counsel Award and Costs, General Release Payment, Settlement
7 Administrator Costs, and entering final approval and judgment.

8 This Motion is made pursuant to Rule 3.769 of the California Rules of Court and Labor Code
9 section 2699(l). This Motion is based on this Notice of Motion and Motion, the attached Memorandum
10 of Points and Authorities, the accompanying Declarations of James R. Hawkins, Madely Nava of
11 APEX CLASS ACTION, LLC, and Plaintiff Taft. Attached to the “Hawkins” Declaration is the
12 Amended Stipulation of Settlement (the “Settlement Agreement”), argument of counsel, all papers
13 and pleadings filed in the action, and upon any further information or evidence requested by the Court
14 at the time of hearing on this Motion.

15
16 Dated: February 22, 2024

JAMES HAWKINS APLC



JAMES R. HAWKINS
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Attorneys for Plaintiff Taft, the Putative Class,
and the Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court preliminary approved the settlement on or about December 12, 2023. (James
4 Hawkins Decl. “Hawkins”, **Exhibit A** - Preliminary Approval Order). Plaintiff Taft (“Plaintiff”)
5 now respectfully requests that this Court grant final approval of the settlement attached to the
6 Hawkins Declaration as **Exhibit B**, which seeks to resolve claims against Defendant SALADINO’S
7 INC. (“Defendant”) in exchange for a non-reversionary Gross Settlement Amount of (“GSA”) of
8 Four Hundred and Fifty Thousand Dollars and Zero Cents (\$450,000.00). To date, the Class
9 Members overwhelmingly supported the Settlement, as there are zero objections and zero requests
10 for exclusion from the Settlement thus far. The proposed Settlement is projected to pay an
11 estimated average gross payment of \$83.45 per Class Member, with the highest estimated gross
12 payment at \$549.78. (Administrator Decl. of Madely Nava-hereinafter “Nava”, ¶ 16).¹

13 A total of 1,265 PAGA Group Members will be paid their portion of the PAGA Fund. Each
14 PAGA Group Member’s share of the PAGA Fund will be proportional to the number of Pay Periods
15 he or she worked during the period PAGA Period. According to Defendant’s records, PAGA Group
16 Members in aggregate worked a total of 41,080 weeks during the PAGA Period. The average
17 estimated payment from the PAGA Fund is \$8.89 and the highest is \$33.72. (Id. at ¶ 18).

18 Plaintiff also moves for final approval of attorneys’ fees in the amount of \$150,000.00
19 which is 30% percent of GSA. As will be demonstrated herein, Class Counsel’s attorney fee request
20 is supported using the percentage fee method and the lodestar method. Second, Plaintiff moves for
21 final approval of payment of the litigation costs in the amount of \$20,231.13, all of which was
22 incurred in litigating this matter. Third, Plaintiff moves for final approval of the General Release
23 Payment to Plaintiff in the sum of \$10,000.00, to compensate the Class Representative for his
24 service as a Class Representative and providing a general release of their claims against Defendant –
25 a release significantly greater than the Class Members provided – and for the risks absorbed and
26 time spent litigating the case. Plaintiff played a vital role in representing Class Members in this case

27 _____
28 ¹ The class notice period expires on February 26, 2024. A supplemental declaration will be provided to the court after the close of the notice period.

1 and spearheading the lawsuit to seek monetary relief on behalf of all Class Members. Fourth,
2 Plaintiff moves for final approval of the payment of \$25,000.00 in administrative costs to APEX
3 CLASS ACTION, LLC. Fifth, Plaintiff moves for final approval of the \$45,000.00 PAGA Payment
4 and the payment to the Labor and Work Development Agency (“LWDA”) for its share of the PAGA
5 Payment (\$33,750.00, which is 75% of \$45,000.00; with the remaining \$11,250.00 payable to
6 Aggrieved Employees).

7 This case required many hours of attorney time from Class Counsel and sought relief on
8 behalf of 2,394 potential class members within the State of California: All non-exempt employees
9 that worked for Defendant in California between July 26, 2018 through April 1, 2023. (Settlement
10 at ¶ 5)

11 This litigation involved the review and analysis of documents, policies, and practices, as well
12 as a full day of mediation. Most importantly, the Settlement and all its terms received overwhelming
13 support from Class Members, as there were no objections and no requests for exclusion. Therefore,
14 Plaintiff respectfully requests the Court grant final approval of the Settlement, Class Counsel Award
15 and Costs, General Release Payment, Settlement Administrator Costs, and payment to the LWDA in
16 the amounts preliminarily approved by the Court and as fully disclosed to Class Members.

17 **II. BACKGROUND, INVESTIGATION, DISCOVERY**

18 On July 20, 2021, Plaintiff filed a putative Class Action entitled *Mark D. Taft v. Saladino’s*
19 *Inc.*, (Sacramento County Case No. 34-2021-00304595) (“*Taft I*”) on behalf of Defendant’s non-
20 exempt employees in California seeking damages for Defendant’s alleged failure to: (1) pay wages
21 including overtime, (2) provide meal periods, (3) authorize and permit rest periods, (4) timely pay
22 wages, (5) for failure to provide accurate itemized wage statements, (6) for unlawful deductions, (7)
23 for payment of wages in non-Labor Code compliant instruments, (8) failure to reimburse expenses,
24 and (9) for unfair competition (“UCL”); (Hawkins Decl. ¶¶ 3-7).

25 On November 9, 2021, Plaintiff filed a PAGA Representative Action entitled *Mark D. Taft v.*
26 *Saladino’s Inc.*, (Sacramento County Case No. 34-2021-00310936) (“*Taft II*”) on behalf of
27 Defendant’s non-exempt employees in California seeking civil penalties for Defendant’s alleged
28 failure to: 1) pay wages including overtime, (2) provide meal periods, (3) authorize and permit rest

periods, (4) timely pay wages, (5) for failure to provide accurate itemized wage statements, (6) for unlawful deductions, (7) for payment of wages in non-Labor Code compliant instruments, (8) failure to reimburse expenses, and (9) civil penalties under the Labor Code Private Attorneys General Act of 2004, California Labor section 2698 et seq. (*Id.*).

On November 22, 2022, the Parties attended a full-day mediation with experienced mediator Michael Dickstein. After a full-day's mediation and subsequent continued negotiations with the assistance of the mediator, the Parties reached an agreement to settle the claims as provided herein, to settle Plaintiff's claims on a class-wide and PAGA basis and on or about March 1, 2023 executed a Memorandum of Understanding, for \$450,000.00 and the terms of which are fully memorialized in the Settlement Agreement. (Hawkins Decl. ¶ 5)

The Class Representative has vigorously prosecuted this case, and Defendant has vigorously contested it. The Parties engaged in sufficient investigation and informal discovery to assess the relative merits of the claims of the Class and of Defendant's defenses to them. *Id.* Defendant has denied all of Plaintiff's allegations in their entirety and any liability or wrongdoing of any kind. *Id.*

1. The Settlement Provides Reasonable Compensation to Class Members

As a result of the mediation, the parties agreed to settle this matter for a Gross Settlement Amount ("GSA") of \$450,000.00 (Hawkins Decl., Ex. B-Settlement Agreement at ¶ 5; Nava Decl. at ¶15). Based on their own respective independent investigations and evaluations, and after taking into account the sharply disputed factual and legal issues involved in this matter, the risks attending further prosecution of the case, and the monetary benefits received under the Settlement despite the questionable nature of the claims, Plaintiff's counsel is of the opinion that Settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate and is in the best interests of the Class Members. (Hawkins Decl. ¶ 5-10).

Even without the presumption of fairness and reasonableness, the settlement is within the range of reasonableness as thoroughly discussed in detail in the motion for preliminary approval, and as considered by the Court in granting preliminary approval, (Hawkins Decl. ¶¶ 11-18; Ex. A- Order Granting Preliminary Approval).

Accounting for the risks of continued litigation and impediments to discovery, Plaintiff determined

that a settlement amounting to \$450,000.00 was fair and reasonable, and accounts for an approximate 50% of the actual damages less penalties and courts have routinely approved settlements that provided a similar discounted range of the maximum potential recovery. (Hawkins Decl. ¶¶ 11-22). *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of Plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).² (Id.)

III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS’ RESPONSE

A. Terms of the Settlement

The GSA is Four Hundred and Fifty Thousand Dollars and Zero Cents (\$450,000.00). This amount includes, the Settlement Administrator Costs of \$25,000.00; the General Release Payment

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

of up to \$10,000.00 to Plaintiff; Court-approved attorneys' fees up to \$150,000.00, litigation costs to Class Counsel in the amount of \$20,231.13; and penalties paid pursuant to PAGA of \$45,000.00 with 75% paid to the LWDA. The Net Settlement Amount ("NSA") is approximately \$211,018.87. (Nava Decl. ¶ 15).

B. Released Claims

Subject to approval by this Court, and in exchange for the consideration recited in the Settlement Agreement, the Released Claims are limited to the wage and hour claims and facts asserted in the operative complaint. (Hawkins Decl., Ex. B- Settlement Agreement ¶ 31).

C. The Timing of the Release Is Appropriate

While the effective date for the release precedes the date that payment is due to Class Members, the Agreement, and all obligations therein by all parties, become effective and are triggered on the date a signed order granting final approval is filed with the Court, assuming no objections to the Agreement have been lodged by Class Members, this puts all parties, including Class Members, in the same position that they would have been had Plaintiff prevailed at trial. At final approval, and as part of the final approval order, judgment is entered consistent with the terms of the Agreement. *See* Cal. Rules of Court, 3.769(h). Just as in the case of judgment after trial, judgment by consent or stipulation has res judicata affects, preventing litigation of claims covered by the settlement. *See Johnson v. Am. Airlines, Inc.*, 157 Cal.App.3d 427, 431 (1984); *Villacres v. ABM Indus. Inc.*, 189 Cal.App.4th 562, 583 (2010). The Court retains jurisdiction to enforce the judgment to ensure compliance. *See* Cal. Rules of Court, 3.769(h). To the extent Defendant does not comply with its contractual obligations and Court judgment, Plaintiff will utilize the Enforcement of Judgments Law ("EJL"), which is the comprehensive scheme governing the enforcement of all civil judgments in California. *See* Cal. Civ. Proc. Code §§ 680.010-724.260. These are the exact same mechanisms any Plaintiff would be subject to, and utilize, to the extent a Defendant did not pay as required after trial. The proposed Agreement with release and payment timing that mirrors what would apply after trial is fair, reasonable, and adequate to all involved, which is the appropriate standard of review. *See North County Contr.'s Assn., Inc. v.*

1 *Touchstone Ins. Svcs.*, 27 Cal.App.4th 1085, 1089-1090 (1994); *Kullar v. Foot Locker Retail, Inc.*,
2 168 Cal.App.4th 116, 133 (2008).

3 Failing to treat all parts of the Agreement as effective raises serious enforcement questions
4 that would undermine Class Counsel's ability to enforce Defendant's obligation to pay. To the extent
5 a provision delaying the applicability of waivers is meant to preserve Class Members' ability to
6 bring individual claims, so long as the Court grants final approval there is a judgment and all Class
7 Member's claims would be extinguished under res judicata as a matter of law. *See Johnson*,
8 157 Cal.App.3d at 431; *Villacres*, 189 Cal.App.4th at 583; Cal. Rules of Court, 3.769(h). The same
9 is true for any claims under the PAGA. Attempting to circumvent that calls into question whether
10 the judgment is actually final. If not, Class Counsel would not be able to utilize the EJM to secure
11 payment from a recalcitrant Defendant. Furthermore, the potential for such individual actions would
12 raise questions of set-offs to the gross settlement amount yet to be funded. This scenario also raises
13 a potential conflict between any Class Member who attempts to bring their own claim and those
14 wish to wait and utilize the EJM rather than relitigate the merits. To the extent that there is any
15 pending bankruptcy, Class Members would have an increased likelihood of getting *some* recovery
16 where there is a judgment, and the only remaining obligation is payment by Defendant. *See In re*
17 *Marciano*, 459 B.R. 27, 53 (B.A.P. 9th Cir. 2011), *aff'd*, 708 F.3d 1123 (9th Cir. 2013).

18 For these reasons, the timing of the waivers and payment dates under the Agreement are
19 appropriate.

20 **D. The Class Members Support the Settlement – Zero (0) Objections and**
21 **Zero (0) Opt-Outs**

22 On December 12, 2023, the Court granted Preliminary Approval of the Settlement,
23 conditionally certified the class for settlement purposes, appointed APEX CLASS ACTION, LLC to
24 act as the administrator, approved the Notice to be sent to the Class, and directed that the Notice be
25 mailed to the Class via U.S. First Class Mail. (Hawkins Decl., Ex. A- Order Granting Preliminary
26 Approval). On January 11, 2024, APEX CLASS ACTION, LLC mailed the Notices to 2,394 Class
27 Members. (Nava Decl. ¶7). As of February 20, 2024 Out of the 2,394 Notices, only 160 were returned
28 by the post office. Of those 160 packets, as a result of performing a computerized skip trace, 47

1 updated addresses were obtained and the Notice Packets were promptly re-mailed to those Settlement
2 Class Members, via U.S First Class Mail. (Nava Decl. ¶¶ 9-11). As a result of the mailing, APEX
3 CLASS ACTION, LLC will report a total of 2,394 Participating Claimants, representing 100% of the
4 2,394 Settlement Class Members. (Nava Decl. ¶14).

5 Each member of the Settlement Class who receives an Individual Settlement Payment must
6 cash that check within 180 days from the date the Settlement Administrator mails it. Any funds
7 payable to Settlement Class members whose checks were not cashed within 180 days after mailing
8 shall be sent to the California State Controller pursuant to the Unclaimed Property Law in the name
9 of the Settlement Class Member (Settlement at ¶ 21).

10 **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

11 **A. The Settlement Satisfies the Standard for Final Approval**

12 California Rule of Court, Rule 3.769, requires court approval for class action settlements. Cal.
13 R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62 Cal. App.
14 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602 (“[T]he law wisely
15 favors settlements”). Accordingly, the Court must give “[due] regard to what is otherwise a private
16 consensual agreement between the parties.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th
17 224, 245.

18 In deciding whether to approve a class settlement, a court evaluates whether the proposed
19 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794,
20 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. Of S.F.* (9th Cir. 1982) 688
21 F.2d 615, 625). A court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App.
22 4th at 1801. However, “a presumption of fairness exists where: (1) the settlement is reached through
23 arms-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court
24 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
25 is small.” *Id.* at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a court should consider
26 additional relevant factors, including the strength of the Plaintiff’s case compared to the settlement
27 amount; the risk, expenses, complexity, and likely duration of further litigation; and the fair treatment
28 of class members in relation to each other. *Dunk*, 48 Cal. App. 4th at 1802.

At the time of preliminary approval, the Court was provided with sufficient information to satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown until after the Class had an opportunity to respond to the Settlement as explained in the Notice. Subject only to the Class’s reaction to the Settlement, the Court preliminarily presumed the Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and adequate time provided to the Class to object to the Settlement, no class member submitted objections and no class members submitted any opt outs of the settlement. (Nava Decl. ¶ 12-13). Thus, the proposed Settlement is entitled to the presumption that it is fair and in all other respects proper and should be finally approved.

V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS

A. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage of a Common Fund

Class Counsel applies for an award of attorneys’ fees in the sum of \$150,000.00 of the GSA, and litigation costs of \$20,231.13 (Hawkins Decl. ¶¶ 23-27). When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method survives in California class action cases.” 1 Cal.5th 480, 506 (2016), in stating:

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

Id. at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a number of persons are entitled in common to a specific fund, and an action brought by a Plaintiff or Plaintiff for the benefit of all results in the creation or preservation of that fund, such Plaintiff or Plaintiff may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund

1 method for calculating attorney’s fees more accurately reflects the results achieved for the putative
2 class than the lodestar method and “establishes reasonable expectations on the part of Plaintiff’s
3 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
4 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The
5 percentage-of-recovery method is generally favored in common fund cases because it allows courts
6 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
7 failure.”).³

8 The purpose of the common fund/percentage approach is to “spread litigation costs
9 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
10 alone.” *Vincent, supra*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167,
11 the Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from
12 which others derive benefits may require those passive beneficiaries to bear a fair share of the
13 litigation costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110,
14 the California Supreme Court recognized that the common fund doctrine has been applied
15 “consistently in California when an action brought by one party creates a fund in which other persons
16 are entitled to share.” The reasons for applying the common fund doctrine include: “...fairness to the
17 successful litigant, who might otherwise receive no benefit because his recovery might be consumed
18 by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share
19 in the fund and who should bear their share of the burden of its recovery; encouragement of the
20 attorney for the successful litigant, who will be more willing to undertake and diligently prosecute
21 proper litigation for the protection or recovery of the fund if he is assured that he will be properly and
22 directly compensated should his efforts be successful.” *Id.* Because there is a defined and clearly
23 traceable benefit to the Class, the Court can base an award of attorneys’ fees using a ‘common fund’
24 approach to compensate Class Counsel.

25
26 ³ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such
27 as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further
28 that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . . they also
retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness
of a requested percentage fee”).

1 **1. The Requested Attorneys’ Fee is Within the Range of Fees Approved in**
2 **Comparable Common Fund Cases**

3 Assessing an appropriate fee based on a percentage of the fund involves considering “all of
4 the circumstances of the case.” Appellate cases addressing fees arise almost exclusively where awards
5 were challenged by Defendant or objectors – the only parties with standing to appeal. *Wershba*, 91
6 Cal.App.4th at 236.

7 The requested fee falls in the mid-range of percentage class fee awards, which generally range
8 from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking complex,
9 risky, expensive, and time-consuming litigation on a contingent basis and compensates Class Counsel
10 for their efforts, as well as the result achieved for the benefit of the Class. Numerous courts in
11 California routinely approve fee requests equal to or greater than 35% of the common fund. *See Martin*
12 *v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch*
13 *v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee
14 on a \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
15 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour
16 class action settlement).

17 In short, Class Counsel’s fee request of \$150,000.00 (30% of the common fund) is in line with
18 awards in similar cases in California and demonstrates that Class Counsel’s fee request is consistent
19 with market rates and is reasonable.

20 **2. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee**

21 Class Counsel’s fee request is reasonable when calculated using the lodestar method.
22 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
23 spent on the case and the reasonable hourly compensation of the attorney. *Serrano*, 20 Cal. 3d at 48.
24 The court then may enhance this lodestar figure by a “multiplier” to account for a range of factors,
25 such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved.
26 *Id.* at 49; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*,
27 92 Cal.App.4th 819, 834 (2001), “[t]here is no...rule limiting the factors that
28 may justify an exercise of judicial discretion to [adjust the] lodestar”].

As of the date of filing, Class Counsel worked approximately 230.70 combined documented hours on this case. Thus, the total lodestar for Class Counsel is approximately \$174,710.00 which is in excess of the fees Class Counsel is requesting. All of the work and tasks performed by Class Counsel were reasonable and necessary to the prosecution of this case. (Hawkins Decl. ¶¶ 23-25).

3. Class Counsel's Hourly Rates are Reasonable

Class Counsel's hourly rates are between \$200 and \$950 and are in line with rates typically approved in wage and hour class action litigation and which rates have been approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County Superior Courts. (Hawkins Decl. ¶ 23; *Children's Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates were reasonable where they were "within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work").

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095. When determining a reasonable hourly rate, courts may consider factors such as skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632. Class Counsel's skill and experience support their hourly rates. Their practices are limited exclusively to litigation, focusing on the representation of employees in wage and hour and consumer class action matters. (Hawkins Decl. ¶ 23). As prominent attorneys in the field of wage and hour class action litigation, Class Counsel continually monitors the prevailing market rates charged by both defense and Plaintiff law firms and set the billing rates of their attorneys and paralegals to be consistent with the prevailing market rates in the private sector for attorneys and staff of comparable skill, qualifications and experience. Other wage and hour attorneys working as class counsel before California courts charge comparable if not higher rates. Therefore, as they are in line with those of the relevant community, Class Counsel's hourly rates are reasonable.

4. Class Counsel's Total Hours are Reasonable

In determining a lodestar fee, reasonable hours include, in addition to time spent during litigation, the time spent before the action was filed, including time spent interviewing clients,

investigating the facts and the law, and preparing the initial pleadings. *See New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

Class Counsel expended a total of approximately 230.70 hours on this case. The work performed to achieve a settlement that will provide valuable consideration to the Class, is summarized by Class Counsel in the declaration submitted herewith. (Hawkins Decl. ¶¶ 18-29); *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699 (2014) ("Because time records are not required under California law . . . , there is no required level of detail that counsel must achieve.") (internal quotations omitted). All tasks and work performed were reasonable and necessary to the prosecution of this case. The work performed was justified in light of the result achieved.

5. Costs of Litigation are Reasonable

Class Counsel seeks reimbursement of the litigation costs and expenses of \$20,231.13. These costs were reasonable and necessary to prosecute this case and the results achieved and are fair, and reasonable. (Hawkins Decl. ¶ 26, attached to the Hawkins Declaration as **Exhibit C**).

VI. THE CLASS REPRESENTATIVE'S SERVICE AWARD IS REASONABLE

Class Counsel seeks approval of a \$10,000.00 General Release Payment to Plaintiff. The requested General Release Payment is reasonable in light of the general releases of all claims Plaintiff agreed to, greater than the release given by Class Members, the benefits Plaintiff conferred upon the entire Class resulting in payments to all Class Members, the time spent assisting counsel with the investigation and prosecution of these claims, commitment to responding to discovery and depositions, and consenting to the proposed Settlement. Furthermore, in pursuing this action on behalf of the Class, Plaintiff risked a judgment for Class Counsel Award and Costs in the event this matter had been lost. (Hawkins Decl. ¶¶ 28-29; See also declaration of Plaintiff Taft filed concurrently herewith)

Courts routinely approve service payments, or incentive awards, to compensate named Plaintiff for the services they provide and the risks they incur during class litigation. *See In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers Ins.*

1 *Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives);
2 Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the total
3 \$10,000.00 General Release Payment to Plaintiff continues to be fair, appropriate, and justified as
4 part of the overall settlement.

5 **VI. THE SETTLEMENT ADMINISTRATOR COSTS ARE REASONABLE**

6 The Parties agreed to hire APEX CLASS ACTION, LLC as the administrator, and the Court
7 approved this choice. The Administrator was responsible for formatting, printing and mailing the
8 Notice. It was also responsible for updating addresses and re-mailing Notices returned as
9 undeliverable, responding to Class Member inquiries, answering questions from Counsel for the
10 Parties, and providing a declaration to document its duties and responsibilities under the settlement.
11 Plaintiff now request that the Court approve the \$25,000.00 fee to APEX CLASS ACTION, LLC for
12 services rendered and to be rendered. (Nava Decl. ¶¶ 3-15). Following the grant of final approval, the
13 Administrator's duties will continue in order to calculate and mail the Individual Settlement Payment
14 checks to Class Members, perform tax reporting obligations, disburse other payments as ordered by
15 the Court, and perform such other duties as set forth in the Settlement Agreement. The fee of
16 \$25,000.00 for services rendered and to be rendered is fair and reasonable and should be granted.

17 **VII. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE**

18 The payment of \$33,750.00 (75% of \$45,000.00) to the LWDA for its share of the applicable
19 penalties claimed under the California Labor Code's Private Attorney general Act of 2004, as
20 amended ("PAGA"), is reasonable under the circumstances. The Parties negotiated a good faith
21 amount to the LWDA. The sum to be paid to the LWDA was not the result of self-interest at the
22 expense of other Class Members. The LWDA was provided notice of the Settlement concurrently
23 with the filing of the preliminary approval motion and the instant motion. Plaintiff did not receive a
24 response or objection to the Settlement from the LWDA. Thus, Plaintiff requests the Court finally
25 approve the sum of \$33,750.00 for payment to the LWDA.

26 **VIII. CONCLUSION**

27 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval of
28 the Class Action Settlement, award (1) Class Counsel's fees in the sum of \$150,000.00 and litigation

1 costs of \$20,231.13; (2) award the Plaintiff an General Release Payment in the sum of \$10,000.0; (3)
2 award \$11,250.00 to APEX CLASS ACTION, LLC, for settlement administration services, and (4)
3 approve the PAGA Payment of \$45,000.00 with a payment to the LWDA in the amount of \$33,750.00
4 and payment to Aggrieved Employees in the amount of \$11,250.00.

5
6 Dated: February 22, 2024

JAMES HAWKINS APLC



JAMES R. HAWKINS
GREGORY MAURO
MICHAEL CALVO
LAUREN FALK
AVA ISSARY

Attorneys for Plaintiff MARK D. TAFT,
the Putative Class, and the Aggrieved
Employees

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On February 22, 2024, I served on the interested parties in this action the following document(s) entitled:

**DECLARATION OF MADELY NAVA OF APEX CLASS ACTION, LLC, IN
SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Eddie@jameshawkinsapl.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(Service List Attached)

Executed on February 22, 2024, at Irvine, California


Eddie Magana

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6 *SALADINOS, INC.*

7
8 **Via LWDA Website Only**

Labor and Workforce Development Agency

9 Attn: PAGA Administrator

10 1515 Clay Street, Ste 801

Oakland, CA 94612

11 <http://www.dir.ca.gov/Private-Attorneys-General-Act>