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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KANIA PATON, SIM ASTRONOMO, GERARDO SANDOVAL, KEVIN SANDOVAL, MELISSA SANDOVAL, EULALIA CARVENTE, OLEGARIO ENCARNACION, GRACIELA JIMENEZ GONZALEZ, and SILVIA HERNANDEZ, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

RUGGABLE LLC, a Delaware limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Case No. 21STCV44381

CLASS AND REPRESENTATIVE ACTION

[*Assigned for all purposes to Hon. Wendy Chang, Dept. 36*]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

FINAL APPROVAL HEARING
Date: October 3, 2024
Time: 8:30 a.m.
Dept.: 36

Complaint filed: December 6, 2021
FAC filed: October 31, 2023
Trial date: Not set

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 3, 2024 at 8:30 a.m., in Department 36 of the Los Angeles County Superior Court, located at 111 North Hill Street, Los Angeles, California, 90012, Plaintiffs Kania Paton, Sim Astronomo, Gerardo Sandoval, Kevin Sandoval, Melissa Sandoval, Eulalia Carvente, Olegario Encarnacion, Graciela Jimenez Gonzalez, and Silvia Hernandez (collectively, "Plaintiffs") will, and hereby do, move for an order as follows:

1. Certifying the Class for settlement purposes;
2. Approving the settlement as fair and reasonable and finding that class members were given notice of the settlement, and advised of their rights to participate in the settlement, object to the settlement, or exclude themselves from the settlement, in a reasonable manner;
3. Appointing Plaintiffs Kania Paton, Sim Astronomo, Gerardo Sandoval, Kevin Sandoval, Melissa Sandoval, Eulalia Carvente, Olegario Encarnacion, Graciela Jimenez Gonzalez, and Silvia Hernandez as Class Representatives for settlement purposes, and approving a Class Representative Service Award of $5,000.00 to each Plaintiff ($45,000.00 total);
4. Appointing Plaintiffs' Counsel, Wilshire Law Firm, PLC, as Class Counsel for settlement purposes, and approving payment of $303,333.33 in attorneys' fees, which is 33 1/3% of the Gross Settlement Amount;
5. Approving costs in the amount of $30,000.00 for litigating this action to Class Counsel;
6. Approving payment of administrative expenses to Apex Class Action LLC as the Settlement Administrator in the amount of $15,000.00;
7. Directing that the clerk of the Court to enter the Court's order as a final judgment; and,
8. Without affecting the finality of the final judgment, reserving continuing jurisdiction over the parties for the purposes of implementing, enforcing and/or administering the Settlement or enforcing the terms of the judgment.

This motion will be based on the accompanying Memorandum of Points and Authorities, the Declarations of Justin F. Marquez, Jose Garay, Madely Nava, and Arsiné Grigoryan and such oral argument as may be heard by the Court, and all other papers on file in this action,

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including but not limited to the Declarations of Plaintiffs previously submitted in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

Dated: September 10, 2024

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

By: Arsiné Grigoryan

Justin F. Marquez
Arsiné Grigoryan

Attorneys for Plaintiffs and Putative Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Kania Paton, Sim Astronomo, Gerardo Sandoval, Kevin Sandoval, Melissa Sandoval, Eulalia Carvente, Olegario Encarnacion, Graciela Jimenez Gonzalez, and Silvia Hernandez (collectively, "Plaintiffs") seek final approval of a proposed $910,000.00 non-reversionary, class action settlement with Defendant Ruggable LLC ("Defendant", and collectively with Plaintiffs, the "Parties"). The Settlement will provide substantial monetary payments to approximately 521 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law.

The proposed settlement satisfies all the criteria for settlement approval under California law. A presumption of fairness exists as the Settlement was reached through extensive, mediated arm's-length negotiations, sufficient investigation and discovery allowed Class Counsel to act intelligently, and Class Counsel is experienced in similar wage-and-hour litigation. Upon the Court's approval of the settlement, participating class members will receive an ***average estimated individual net settlement payment of approximately $941.62***, with the ***highest individual net settlement payment to be paid of approximately $3,473.24***. (Declaration of Madely Nava on Behalf of Apex Class Action LLC ["Nava Decl."], ¶ 16.) As of filing this Motion, there **no objections to the settlement** and **no requests for exclusion**. (*Id.* at ¶¶ 11-12). Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members.

Final approval of the settlement is warranted as it satisfies all the criteria for approval under California law. As demonstrated in the motion for preliminary approval the proposed Settlement provides excellent benefits to the class, particularly considering the complexities and risks of the case. Accordingly, Plaintiffs request that the Court grant final approval of the proposed Settlement.

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II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

This is a wage and hour class and Private Attorneys General Act ("PAGA") (Labor Code §§ 2699, *et seq.*) representative action. Plaintiffs and putative Class Members worked in California as hourly-paid or non-exempt employees for Defendant during the Class Period. Defendant is an e-commerce start-up company that produces machine-washable area rugs, runners, and doormats for consumer purchase. (Declaration of Justin F. Marquez in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ["Marquez Decl."], ¶ 2.)

Plaintiffs allege that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiffs allege that Defendant failed to pay all minimum and straight-time wages owed, Defendant failed to pay for all overtime, Defendant had a policy and practice of not providing its employees with California-compliant meal and rest periods which it did not pay appropriate payments for, and Defendant failed to reimburse employees for necessary business expenses. Defendant denies these claims and denies that any wages or penalties are owed to the putative class or alleged aggrieved employees. Based on these allegations, Plaintiffs assert related claims for failure to provide accurate wage statements, failure to pay all final wages at termination, unfair business practices, and civil penalties under PAGA. Defendant denies these allegations. (*Id.* at ¶ 3.)

On December 6, 2021, Plaintiff Kania Paton filed a PAGA representative action on behalf of herself and all hourly-paid, non-exempt employees in California against Defendant for failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide Plaintiff with legally compliant meal periods, failure to authorize and permit Plaintiff to take rest periods, failure to pay all wages earned twice per month, failure to maintain accurate records, failure to timely pay all final wages to Plaintiff when Defendant terminated her employment, failure to furnish accurate wage statements to Plaintiff and failure to indemnify Plaintiff for necessary business expenditures. (*Id.* at ¶ 4.) On October 1, 2021, Plaintiff Paton sent a notice to Defendant and the California Labor & Workforce Development Agency ("LWDA") alleging wage-and-hour violations pursuant to PAGA. The PAGA notice was

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amended to add Plaintiff Sim Astronomo on December 9, 2021. Thereafter, Plaintiff Graciela Jimenez Gonzalez also submitted a separate PAGA notice to the LWDA and Defendant on June 8, 2023. (*Id.*)

The operative complaint is the First Amended Complaint deemed filed on October 31, 2023, pursuant to a stipulation submitted by the Parties and granted by the Court. Plaintiff's First Amended Complaint adds Plaintiffs Graciela Jimenez Gonzalez, Sim Astronomo, Gerardo Sandoval, Melissa Sandoval, Kevin Sandoval, Eulalia Carvente, Olegario Encarnacion, and Silvia Hernandez and includes class claims for the failure to: (1) pay minimum and straight time wages; (2) pay overtime wages; (3) provide meal periods; (4) authorize and permit rest periods; (5) timely pay final wages at termination; (6) provide accurate itemized wage statements or maintain accurate time records; (7) indemnify employees for expenditures; and (8) unfair business practices. (*Id.* at ¶ 5.)

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B. Discovery and Investigation

Following the filing of the Complaint, the Parties exchanged documents and information before mediating this action. Defendant produced a sample of time and pay records for class members. Defendant also provided documents of its wage and hour policies and practices during the class period, and information regarding the total number of current and former employees in its informal discovery responses. (*Id.* at ¶ 6.)

After reviewing documents regarding Defendant's wage and hour policies and practices and analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's estimated maximum monetary exposure for all claims. (*Id.* at ¶ 7.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation, including Defendant's argument that many putative class members signed arbitration agreements and class waivers. (*Id.*) Class Counsel reviewed these records and prepared a damage analysis assessing Defendant's potential liability prior to mediation. (*Id.*)

C. Settlement Negotiations and Agreement

On June 8, 2022, certain Plaintiffs participated in private mediation with experienced class action mediator Lisa Klerman, Esq. The Parties did not settle following this mediation. (*Id.* at ¶ 8.) On January 19, 2023, now with the involvement of all Plaintiffs, the Parties participated in another private mediation with Ms. Klerman. The mediation was conducted via Zoom. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached settlements, the material terms of which are encompassed within the Settlement Agreement. (*Id.*, **Ex. 1** [Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement")].)

Class Counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.* at ¶ 9.)

D. <u>Preliminary Approval and Overwhelming Support for the Settlement</u>

The Court granted Plaintiffs' Motion for Preliminary Approval of the Settlement[1] on March 26, 2024. (*Id.* at ¶ 11.) The deadline for class members to opt out or object to the Settlement was July 30, 2024. (*Id.*) The reaction of the Class to the settlement has been overwhelmingly positive. Indeed, as of the filing of this Motion, no Class Member has opted out of the settlement, and no Class Members have objected to the settlement. (*Id.*)

E. <u>Key Terms of the Proposed Settlement</u>

Under the Settlement Agreement, Defendant will pay $910,000.00 to resolve this litigation. The key terms include:

[1] The proposed Settlement Agreement was provided to the LWDA in advance of the Plaintiffs filing their Motion for Preliminary Approval. (Marquez Decl. at ¶ 12.)

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1. Settlement Class: For purposes of this Settlement Agreement only, the Parties agree to the certification of the classes pursuant to California Code of Civil Procedure § 382 defined as: "all hourly employees who worked in California for Defendant during the Class Period." (Settlement, Definitions, § 1.5.)

2. Class Period: means "the period from June 8, 2018 and June 8, 2022." (Settlement, Definitions, § 1.12.)

3. Participating Class Members: "means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement." (Settlement, Definitions, § 1.34.)

4. Gross Settlement Amount: Defendant promises to pay $910,000.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of the Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant. (Settlement, § 3.1.)

5. Uncashed Checks: For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure section 384, subd. (b). (Settlement, § 4.4.3.)

6. Release by Participating Class Members: "All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and ascertained in the course of the Action, including, *e.g.*, any failure to pay all wages due (including minimum wage, straight time, and overtime wages), failure to pay for all hours worked, failure to provide meal or rest periods, failure to timely pay wages and final wages, failure to maintain accurate records of hours worked and meal periods, failure to furnish

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accurate wage statements, failure to provide expense reimbursements (including claims derivative and/or related to these claims). This Release shall include all claims and theories arising under the California Labor Code, the Fair Labor Standards Act, California wage orders, and applicable regulations, including California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, as well as claims under Business and Professions Code section 17200, *et seq.*, and/or California Labor Code section 2698, *et seq.* based on alleged violations of the above Labor Code provisions, as alleged in the Action. Except as set forth in Paragraph 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period." (Settlement, § 5.2.)

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7. Release by Aggrieved Employees: "All Aggrieved Employees (regardless of whether they are Participating Class Members) are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint during the PAGA Period, Plaintiffs' PAGA Notices, and ascertained in the course of the Action, including, e.g., any failure to pay all wages due (including minimum wage, straight time, and overtime wages), failure to pay for all hours worked, failure to provide meal or rest periods, failure to timely pay wages and final wages, failure to maintain accurate records of hours worked and meal periods, failure to furnish accurate wage statements, failure to provide expense reimbursements (including claims derivative and/or related to these claims)." (Settlement, § 5.3.)

8. No Reversion: None of the Gross Settlement Amount will revert to Defendant. (Settlement, § 3.1.)

9. PAGA Allocation: PAGA Penalties in the amount of $30,000.00 to be paid from the Gross Settlement Amount, with 75% ($22,500) allocated to the LWDA PAGA Payment and

25% ($7,500) allocated to the Individual PAGA Payments. (Settlement, § 3.2.4.)

10. Net Settlement Amount: "Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments (based on the number of paychecks received during the Class Period), all Individual PAGA Payments, the LWDA PAGA Payment (based on the number of paychecks received during the PAGA Period), the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 10 days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose

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original check was lost or misplaced, if requested by the Class Member prior to the void date. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure section 384, subd. (b). The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members beyond those specified in this Agreement." (Settlement, § 4.4.)

11. Tax Allocation: 100% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties. The Individual Class Payments are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payments. (Settlement, § 3.3.2.)

12. Class Representative Service Awards: Class Representative Service Payments to the Class Representatives of not more than $5,000.00 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as Participating Class Members or Aggrieved Employees). Defendant will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments. (Settlement, § 3.2.1.)

13. Attorneys' Fees and Costs: A Class Counsel Fees Payment of not more than 33

1/3% of the Gross Settlement Amount, which is currently estimated to be $303,333.33 and a Class Counsel Litigation Expenses Payment of not more than $30,000.00. Defendant will not oppose requests for these payments provided they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Counsel Litigation. (Settlement, § 3.2.2.)

14. Expenses Payment: If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments. (Settlement, § 3.2.2.)

15. Notice to the Class: Not later than 3 business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members and Aggrieved Employees. Using best efforts to perform as soon as possible, and in no event later than 20 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, vial first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address

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Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send the Class notice to Class Members whose Class Notice is returned by the USPS a second time. The deadlines for Class Members' written objections and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class members whose notice is re-mailed. The Administrator will inform the Class members of the extended deadline with the re-mailed Class Notice. If the Administrator, Defendant, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person, by video conference, or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later. (Settlement, § 7.4.)

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III. <u>THE SETTLEMENT MERITS FINAL APPROVAL</u>

The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors to be considered in evaluating a class action settlement include "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through proceedings, the experience and views of counsel, the presence of a government participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a settlement is fair and reasonable exists where, as here, the following four factors are present: "(l) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 245.)

Whether a class action settlement should be approved is a question committed to the trial court's broad discretion. (*Id.* at pp. 234-35.) In exercising its discretion, the Court should give "[d]ue regard ...to what is otherwise a private consensual agreement between the parties." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) "The inquiry 'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Id*. [internal citations omitted].)

A. The Settlement Reflects a Reasonable Compromise.

A settlement is not judged against what the plaintiff might recover had she prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba, supra,* 91 Cal.App.4th at pp. 246, 250 ["Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."].)

The settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiffs' claims. (Marquez Decl., ¶ 10.) While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to each cause of action. (*Id.*) Plaintiffs also recognize that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Furthermore, even if Plaintiffs obtained certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the class. (*Id.*)

Because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of $910,000.00 is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.* at ¶ 9.) ***Indeed, each Settlement Class Member is eligible to receive an average benefit of approximately $941.62, and the highest estimated net payout is expected to be***

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approximately $3,473.24. (Nava Decl., ¶ 16.)

B. The Settlement was Reached After Arms-Length Negotiations Following Formal and Informal Discovery.

The Settlement was reached over the course of multiple mediation sessions with experienced class action mediator, Lisa Klerman, Esq. (Marquez Decl. ¶ 8.) The settlement negotiations were at arm's length and, although conducted in a professional manner. (*Id.*) The parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. (*Id.*)

Prior to reaching this settlement, Class Counsel conducted informal discovery concerning the claims set forth in the Litigation, such as a sample of class member timekeeping and payroll records, Defendants' policies and procedures concerning Plaintiffs' claims. (*Id.* at ¶¶ 6-7.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the Litigation. (*Id.*) Thus, Plaintiffs and their counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

C. Plaintiffs' Counsel Has Substantial Class Action Experience

Class Counsel also has considerable experience and has demonstrated competence with litigating wage and hour class actions. (Marquez Decl. at ¶¶ 28-39.) Class Counsel has substantial experience in all facets of litigation in state and federal court, including discovery, law and motion, trial, appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf of plaintiffs and have been lead counsel or otherwise exercised significant case handling responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id.*)

Based on Class Counsel's experience as employment and class action attorneys, Class Counsel is eminently qualified to evaluate the strength of Plaintiffs' claims, the strength of Defendants' defenses against certification, the strength of Defendants' defenses on the merits, and the fairness of the Settlement. Their opinion that final approval of the Settlement would be in the best interests of class members in light of the significant risks of litigation is entitled to great weight. (*See Kullar, supra,* 168 Cal.App.4th at 129 ["The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arms' length transaction entered without self-dealing or other potential misconduct"].)

D. <u>There Were No Objections to the Settlement.</u>

No class member has objected to the Settlement, and no class members has requested exclusion from the Settlement. (Nava Decl., ¶ 11-12.) The overwhelmingly positive response of the class strongly supports final approval of the Settlement. (*See, e.g., In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 [relatively few objections and requests for exclusion support approval].)

Factors to be considered in evaluating a class action settlement include "the reaction of the class members to the proposed settlement." (*Kullar, supra,* 168 Cal.App.4th at p. 128.) The reaction here has been overwhelmingly positive. Courts have approved class action settlements in lesser circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S. Dist. LEXIS 5976, 2001 WL 34089697, *8 [court found that the "class members overwhelmingly support[ed] the settlement" where there were over 37,000 notices sent out, 2,745 class members participated in the settlement, "only nine objections were submitted", and there were 86 timely opt-outs and over 20 additional defective or untimely opt-outs, "these indicia of the approval of the class of the terms of the settlement support a finding of fairness under Rule 23"], *citing Hanlon v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1027 [despite vigorous objections and appeal by objectors, the "fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness," and the court did not abuse its discretion in approving settlement].)

IV. <u>THE COURT SHOULD AWARD PLAINTIFFS THE REQUESTED AMOUNTS OF FEES, COSTS AND ENHANCEMENT PAYMENTS.</u>

Under the Settlement, subject to the Court's approval, Defendant has agreed to pay Class Counsel reasonable attorneys' fees in the amount of $303,333.33, which is 33 1/3% of the Gross Settlement Amount, costs up to $30,000.00 for litigating this Action, and enhancement awards of $5,000.00 ($45,000.00 total) to each of the following named Plaintiffs: Kania Paton, Sim

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Astronomo, Gerardo Sandoval, Kevin Sandoval, Melissa Sandoval, Eulalia Carvente, Olegario Encarnacion, Graciela Jimenez Gonzalez, and Silvia Hernandez Defendant has also agreed that it would not oppose an application for these payments addressed above, and no class member has objected to these amounts.

"In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba, supra,* 91 Cal.App.4th at pp. 234-235.) "Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (*Id.* at p. 254; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)

A. Counsel Requests an Award of Fees Based on the "Common Fund" Method

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. The California Supreme Court held that "when a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [*quoting D'Amico v. Board of Medical Examiners* (1974) 11 Cal. 3d 1.)

Class Counsel intends to seek an award of attorneys' fees on the "percentage of recovery/ common fund" theory. The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995) 15 Cal. 3d 162, 167, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share."

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The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc*. (2016), 1 Cal.5th 480, that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Id*. at p. 503.) The court explained: "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*.)

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote: "This court is compelled to ask, 'Is this process necessary?' Under a cost-benefit analysis, the answer would be a resounding, 'No!'" (*In re Activision Securities Litigation* (N.D. Cal 1989) 723 F. Supp. 1373, 1375.) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id*. at pp. 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney's fees. (*See*, *e.g. In re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79 [approving attorney's fee of 33 1/3%].)

1. The Standard Fee Award in Class Actions has Resolved Itself as One-Third of the Recovery in Common Fund Cases

According to a leading treatise on class actions, "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages

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are not unprecedented." (*See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03.) Attorneys' fees at fifty percent of the fund are typically considered the upper limit, with ***thirty to forty percent*** commonly awarded in cases where the settlement is relatively small. (*See Id.*; *see also, Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50% was awarded involved "smaller" settlement funds of under $10 million].)

The settled-for 33 1/3% fee award is consistent with the average fee award in class actions. Indeed, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Thus, Plaintiffs' fee request is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. Accordingly, Plaintiffs request that the Court approve the attorneys' fees requested herein.

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2. This Matter Involves A "Fee-Shifting" Provision of the Labor Code.

Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

> [A]ny employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

(Cal. Lab. Code § 1194.)

As this litigation culminated in a settlement that provided for a recovery of unpaid wages, including unpaid minimum wages and overtime compensation, Plaintiffs are entitled to recover reasonable attorneys' fees and costs under the California Labor Code.

Class Counsel is also entitled to a fee award under California's private attorney general statute, Code of Civil Procedure § 1021.5. "The award of attorneys' fees is proper under Section 1021.5 if '(1) plaintiffs' action 'has resulted in the enforcement of an important right affecting the public interest,' (2) 'a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons' and (3) 'the necessity and financial burden of private enforcement are such as to make the award appropriate.'" (*Press v. Lucky Stores* (1983)

34 Cal.3d 311, 317-318.) The fundamental objective of the statute is "to encourage suits enforcing public policies by providing substantial attorneys' fees to successful litigants in such cases." (*Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 565.)

This action resulted in the enforcement of an important right affecting the public interest, as Plaintiffs sought to enforce Settlement Class Members' rights to recover statutory wages arising from Defendant's failure to pay all wages and failure to provide meal and rest breaks. (*See Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1113 [noting that "health and safety concerns" are what motivated the Industrial Wage Commission to adopt mandatory meal and rest periods].)

This action also conferred a significant benefit on a large class of persons. Notice was sent to 520 Settlement Class Members, and no Settlement Class Member requested exclusion. (Nava Decl., ¶ 11-13.) The Settlement provides a significant monetary benefit, in that it permits all persons who worked for Defendant during the applicable class period to obtain compensation for unpaid wages and missed meal and rest periods.

Finally, the necessity and financial burden of private enforcement render an award appropriate. Without the incentive of an attorneys' fee award, Plaintiffs could not have afforded to hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiffs' potential recovery. (*See Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th 1033, 1044 ["As to the necessity and financial burden of private enforcement, an award is appropriate where the cost of the legal victory transcends the claimants' personal interest; in other words, where the burden of pursuing the litigation is out of proportion to the plaintiff's individual stake in the matter."].)

3. This Matter Involves A "Fee-Shifting" Provision of the Labor Code.

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possesses considerable expertise in litigating class action matters. Class Counsel has been involved as lead counsel or co-counsel in dozens of class actions resulting in a multitude of beneficial results to class members in California. Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, a fee award of

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33 1/3% of the Gross Settlement Amount, a percentage considered within the norm in class action practice, is certainly justified here.

Class Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel has frequently received fee awards amounting to 33 1/3% of the recovery for the class. Therefore, the requested fee award is reasonable and fair.

B. While the Lodestar Method is Not Necessary in Common Fund Cases, Courts May Perform a Cross-Check to Award Fees.

Although California supports the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to "cross-check" or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

Applying the lodestar method requires a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate. The second step is to apply a multiplier to the lodestar to take into account various factors. "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id.* at pp. 556-57.) "Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." (*Id.* at p. 557.)

Class Counsel's lodestar is at least $25,618.90 based on at least 200 hours of work performed thus far. (Marquez Decl., ¶ 19.) Accordingly, the requested fee of $303,333.33 is reasonable and fair as it is based on an approximate multiplier of 1.55. To be sure, trial courts

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have substantial discretion in adjusting the lodestar to account for various factors. (*See Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26, 39-45; *see also Serrano*, *supra,* 20 Cal.3d at p. 49.) In addition, it has been held that "[m]ultipliers can range from 2 to 4 or even higher." (*See Wershba*, 91 Cal.App.4th at p. 255; *see also Van Vranken*, *supra,* 901 F. Supp. At p. 298 ["[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation."] Similar multipliers have been found to be reasonable for Class Counsel. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB, 2021 WL 3673845, *3 [finding Wilshire Law Firm's multiplier of 2.57 reasonable "in light of the contingent nature of recovery, the complexity of the issues, and the result obtained"].)

1. Class Counsel's Rates Have Been Approved by Several Courts.

Class Counsel provides a declaration to support their lodestar hourly rates. "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." (*United Steelworkers of America v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.) Class Counsel has received final approval of their hourly rates in other wage and hour class action settlements.

For example, Mr. Marquez' hourly rates were recently approved in *Suarez v. Bank of America, N.A.* (N.D. Cal. Jan. 11, 2024), No. 18-cv-01202-LB, 2024 WL150721. There, the court held that "[a]s for the lodestar cross-check, the billing rates are normal and customary for timekeepers with similar qualifications and experience in the relevant market." (*Id.* at p. *3.)

These rates are not opposed or challenged.

2. The Lawsuit Provided a Public Benefit.

Class Counsel's choice to litigate this matter provided a public benefit to approximately 605 California employees. Moreover, the California Supreme Court stated that "Labor Code section 1194 confirms "a clear public policy … that is specifically directed at the enforcement of California's minimum wage and overtime laws for the benefit of workers." [citation omitted]." (*Sav-on Drug Stores, Inc. v. Super. Ct*. (2004) 34 Cal.4th 319, 340.) Given the financial risks and numerous attorney hours attendant to the litigation of Plaintiffs' claims, this factor supports Class Counsel's

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fee request and encourages the private enforcement of legal rights for the general good.

3. Applying a Positive Multiplier Is Appropriate.

Once this lodestar figure has been determined, the Court may take into account other "enhancement" factors to adjust the lodestar award. While Plaintiffs seek a multiplier of 1.55 here, the overall reasonableness of Plaintiffs' request is underscored by the fact that a significantly higher multiplier would be justified under applicable law.

Contingency fees should be higher than fees for the same legal services paid concurrently with the provision of the services. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33.) "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." (*Id.* at p. 1133.) Application of that rule is particularly appropriate where the case is brought to redress important rights of vulnerable persons. (*Id.*) A risk enhancement is "earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather it is intended to approximate market-level compensation for such services which typically pay a premium for the risk of nonpayment or delay in payment of attorney's fees." (*Id.* at p. 1138.)

"Multipliers can range from 2 to 4 or even higher." (*Wershba*, *supra,* 91 Cal.App.4th at p. 255; *see also Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 512 [applying a 2.52 multiplier on a cross-check in an antitrust class action]; *Chavez, supra,* 162 Cal. App. 4th at p. 60 [applying a 2.5 multiplier on a lodestar cross-check]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 n.6 ["most" common fund cases apply a multiplier of 1.0-4.0]; *Been v. O.K. Industries Inc.* (E.D. Okla. 2011) 2011 WL 4478766, *11 [citing a study "reporting [an] average multiplier of 3.89 in survey of 1,120 class action cases" and finding that a multiplier of 2.43 would be "per se reasonable"].) The intermediate court in *Laffitte*, after finding that "2 to 4" is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier. (*Laffitte v. Robert Half Int'l* (2014) 231 Cal. App. 4th 860, 881-82.) The intermediate court opinion was affirmed in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

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Factors considered in determining whether a lodestar multiplier is appropriate generally include: (1) the risks presented by the contingent nature of the case; (2) the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly; (3) the nature of the opposition; (4) the preclusion of other employment by the attorney due to acceptance of the case; and (5) the result obtained and the importance of the lawsuit to the public. (*Serrano, supra,* 20 Cal. 3d at pp. 48-49.) All of these factors favor approval of a multiplier along the lines of those approved in the cases above.

The major consideration in determining the necessity of a multiplier is the contingent nature of the award. (*Ketchum, supra,* 24 Cal.4th at pp. 1132-33.) Further, the possibility of no recovery is only one of the uncertainties involved in taking on such a case. Other uncertainties are the amount that will be recovered, uncertainty as to the cost, both in effort and expenses, and uncertainty about how much time will pass before the recovery is obtained. (*Id.* at pp. 1132-1133, 1138.) Here, Class Counsel have been the only counsel to represent Class Members in this matter and have borne the entire risk and costs of litigation purely on a contingency basis. Class Counsel's outlay of time and money in this case has been significant.

The other factors are also present here. Class Counsel are skilled attorneys who have had success in wage-and-hour class actions. This case required experienced and competent lawyers and expertise in the issues presented herein. Defendant's contentions underscore the risk of prevailing at class certification and trial, and any of these obstacles could have prevented recovery completely. Further, proceeding to trial would have added years to the resolution of this case because of the difficult legal and factual issues raised and the likelihood of appeals. Despite these risks, Class Counsel took this case on a contingency basis. Yet, there are only so many cases that Class Counsel can take at any one time. Consequently, there were other meritorious cases presented to Class Counsel that would have generated substantial fees, but were declined, during the pendency of this action in order to devote the attention necessary to achieve favorable results. (Marquez Decl., ¶ 32.) Considered against the risks of continued litigation, and the importance of the employment rights and a speedy recovery, the relief provided under the Settlement represents a very strong result for the Class.

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C. Costs Are Reasonable.

As of the date of filing this Motion, Class Counsel has incurred around $25,318.90 in costs, and they anticipate incurring at least $300 in combined additional costs up to the time the Court enters a judgment in this action and schedules a hearing on distribution. (Marquez Decl., ¶ 27.) Accordingly, Class Counsel respectfully requests reimbursement of up to $25,618.90 in costs. Notably, Defendant has agreed that they will not oppose any cost award request up to $30,000.00. The categories of costs are set forth in the accompanying Declaration of Justin Marquez, and these costs are easily seen to be both reasonable and necessary.

Counsel can recover "out-of-pocket expenses that 'would normally be charged to a fee paying client'" including costs for "service of summons and complaint, service of trial subpoenas, fee for defense expert at deposition, postage, investigator, copying costs, hotel bills, meals, messenger service and employment record reproduction." (*Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.) Such costs are properly recoverable on motions for settlement approval. (*See Nunez v. BAE Sys. San Diego Ship Repair Inc.* (S.D. Cal. 2017) 292 F. Supp. 3d 1018, 1057; *Rutti v. Lojack Corp.* (C.D. Cal. July 31, 2012) No. CV 06–00350 DOC, 2012 WL 3151077, at *12 ["Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents scanning, and visual equipment are typically recoverable."].)

D. The Enhancement Payments to Plaintiffs Are Reasonable.

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz, supra,* 86 Cal.App.4th at p. 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958-59.) The California Supreme Court has also noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443,

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460-61.) Plaintiffs should therefore be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the settlement agreement, subject to the Court's approval, Defendant agrees to pay a Service Award in the amount of $5,000.00 to each of the following Plaintiffs: Kania Paton, Sim Astronomo, Gerardo Sandoval, Kevin Sandoval, Melissa Sandoval, Eulalia Carvente, Olegario Encarnacion, Graciela Jimenez Gonzalez, and Silvia Hernandez. This amount is also in exchange for Plaintiffs' general release of all claims against Defendant. Plaintiffs have submitted declarations demonstrating their devotion to this case, including their efforts assisting counsel in the case, communicating with counsel frequently for litigation, preparing for mediation, and reviewing case-related documents. (*See, generally,* Declarations of Plaintiffs previously submitted with Plaintiffs' Motion for Preliminary Approval.)[2]

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive award given to class action plaintiffs from **1993 to 2002** found that the "average award per class representative was $15,992 and the median award per class representative was $4,357." (Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study", 53 UCLA L. Rev. 1303, 1308 (2006).)

"Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit." (*Clark v. Am. Residential Services LLC* (2009) 175 Cal. App. 4th 785, 804.) "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." (Id. at 806.) "An incentive award is appropriate 'if it is necessary to induce an individual to participate in the suit."' (*Cellphone Term. Fee Cases* (2010) 186 Cal. App. 4th 1380, 1394, quoting *Clark*, *supra*, 175 Cal. App. 4th at 804.) The "criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both

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[2] *See generally*, Declaration of Arsiné Grigoryan.

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financial and otherwise; (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 (or lack thereof) enjoyed by the class representative as a result of the litigation." (*Id.* at pp. 1394–95.)

Here, Plaintiffs have the right to move the Court for incentive awards of up to $5,000.00 each ($45,000.00 total) in light of their risk in pursuing this case, time and effort devoted to this case, and the benefit received for the other class members.

E. <u>Administration Expenses Should be Approved.</u>

Apex Class Action LLC, the Settlement Administrator, estimates that it will incur a total of $11,500.00 in costs associated with the administration of this Settlement. (Nava Decl., ¶ 19.) These expenses are reasonable, based upon the size of the class, claim and exclusion tracking, and Class Member payment processing.

V. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the proposed settlement.

Dated: September 10, 2024

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

By: Arsiné Grigoryan

Justin F. Marquez
Arsiné Grigoryan

Attorneys for Plaintiffs

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PROOF OF SERVICE

Paton, et al. v. Ruggable, LLC, et al.
21STCV44381

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Sandy Sespene, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is sandy.sespene@wilshirelawfirm.com.

On **September 10, 2024**, I served the foregoing **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES,** on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

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Attorneys for Plaintiffs Graciela Jimenez Gonzalez, et al.

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on September 10, 2024, at Los Angeles, California.

Sandy Sespene

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