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and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

BRANDY FIRMAN, on behalf of herself and all others similarly situated, and on behalf of the general public, Plaintiffs, v. POWER SECURITY GROUP, INC.; SID HASHEMI; and DOES 2-100, Defendants.	Case No.: CIVSB2135245 [Consolidated with Case No. CIVSB2204887] **PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, ATTORNEYS' FEES, COSTS, CLASS REPRESENTATIVE ENHANCEMENT PAYMENT, AND ENTERING OF FINAL JUDGMENT** Date: February 3, 2025 Time: 8:30 a.m. Dept.: S26

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I. INTRODUCTION

This motion seeks approval of a non-reversionary $150,000 proposed wage and hour class action settlement reached between Plaintiff Brandy Firman (hereinafter "Plaintiff") and Defendants Power Security Group, Inc. and Sid Hashemi (hereinafter "Defendants") (hereinafter Plaintiff and Defendants are collectively referred to as the "Parties").[1] The settlement is on behalf of Plaintiff and a Class comprised of current and former hourly, non-exempt security patrol officer, security vehicle patrol officers, security guards, private security guards, dispatchers, field officers, flex officers, guards, or similar job designations and titles, and all other similarly situated non-exempt, hourly employees who worked for Defendants in California at any time during the Class Period.[2] The Class Period is December 29, 2017 through July 20, 2022.[3] This motion also seeks an order entering judgment.

On October 7, 2024, the Settlement Administrator mailed Class Notices to all 132 Class Members.[4] These Class Members had until December 6, 2024, to request to be excluded from the settlement, to object to the settlement, or submit a dispute regarding the number of workweeks that Class Members were credited to have worked. As of the date of this filing, the Settlement Administrator has not received any disputes regarding the number of workweeks that Class Members were credited to have worked, nor has the Settlement Administrator received any

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[1] The Joint Stipulation and Settlement Agreement (hereinafter "Agreement") is attached to the Declaration of David Mara, Esq. ("Mara Dec.") as **Exhibit 5**. "**Exhibit 5**" herein refers to the Agreement.

[2] **Exhibit 5** at Paragraph I(5).

[3] After the class workweek data was provided to the Settlement Administrator, it was determined that the workweeks worked by Class Members during the original Class Period of December 29, 2017 through September 20, 2023, exceeded 4,857, triggering the Escalator Provision in the Agreement. Mara Dec., **Exhibit 5**, III(51)(A). The provision provided if the actual number of workweeks exceeded 4,857 (greater than a 5% increase from the originally contemplated 4,626 workweeks), Defendants could either increase the Gross Settlement Amount proportionately according to the number of additional workweeks over the 5% cap, or close the Class Period just before the date the workweeks exceeded this 5% cap. *Id*. Defendants chose to close the Class Period just before the date the workweeks exceeded this 5% cap. Based on the data provided, the Settlement Administrator determined that the Class Period would need to close on July 20, 2022, to avoid the total workweeks exceeding the 4,857 cap contained in the Escalator Provision.

[4] Declaration of Madely Nava of Apex Class Action, LLC, in Support of Motion for Final Approval of Class Action Settlement ("Nava Dec.") ¶ 7.

objections to the settlement or requests for exclusion from the settlement.[5]

To date, this matter has required 144 hours of attorney time from Class Counsel. This litigation involved investigations into the claims asserted, discovery, the production and review of documents from Defendants, a full day of mediation, and evaluation of continuing litigation.

As will be demonstrated herein, the attorneys' fee request of $50,000 ("Attorney Fee Award"), which represents one-third of the Gross Settlement Amount ("GSA"), is fully supported using the percentage fee method. The Attorney Fee Award is also supported under the lodestar cross-check method. Plaintiff further moves for reimbursement of litigation costs and expenses in the amount of $18,293.45 ("Cost Award"), originally estimated not to exceed $20,000, for costs incurred in litigating this matter. Plaintiff also moves for final approval of the payment in the amount of $7,500 to Plaintiff (this payment is referred to as the "Class Representative Enhancement Payment") to compensate her for agreeing to a general release of her claims against Defendants and her vital role in representing the Class Members and spearheading the case to seek actual and substantial monetary relief for the Class. Additionally, Plaintiff moves for final approval of Administration Costs in the amount of $6,500, originally estimated not to exceed $10,000, to the Settlement Administrator, Apex Class Action Administration (hereinafter "Apex") for the costs and fees of administering settlement ("Administration Costs").

The requested Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, and Administration Costs were fully disclosed to the Class Members when the Class Notice was mailed to them. Most importantly, to date, the settlement and all of its terms have received support from Class Members as not a single Class Member has objected to the settlement or requested to be excluded from it. With a currently estimated average and high payout to Settlement Class Members of $497.78 and $2,397.41, respectively, the settlement is fair, adequate, and reasonable. The Court is, therefore, respectfully requested to consider the Class Members' endorsement of the settlement and grant final approval of the settlement, and approve of the Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, and Administration Costs in the amounts as preliminarily approved of by this Court and disclosed to

[5] Nava Dec. ¶¶ 11-13.

the Class Members, and as requested herein.

As demonstrated herein, Class Counsel is convinced that the proposed settlement is in the best interest of the Class based on the negotiations and a detailed knowledge of the issues present in this matter. The length and risks of trial and perils of litigation that affect the value of the claims were all carefully weighed by Class Counsel. In addition, the affirmative defenses asserted by Defendants, Defendants' contentions that Class Members were compensated for all wages due and provided lawful meal and rest breaks, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages, and various possible delays and appeals, including the very real possibility that due to Defendants' financial condition, it would be financially insolvent before a judgment could be collected on, were all carefully considered by Class Counsel in arriving at the proposed settlement.

II. BACKGROUND, INVESTIGATION, AND LITIGATION HISTORY

a. Litigation History

Defendants provides security services for its customers in the State of California. In order to carry out its business, Defendants employ hourly non-exempt security guards, like Plaintiff. Mara Dec. ¶ 9.

On December 28, 2021, Plaintiff sent notice to the LWDA of his intent to pursue various wage and hour claims against Defendants on behalf of similarly situated aggrieved employees. Shortly thereafter, Plaintiff filed a putative class action complaint on December 29, 2021, against Defendants in the San Bernardino County Superior Court, Case No. CIVSB2135245, alleging causes of action for: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure Authorize and Permit Recovery Periods; (6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (7) Failure to Pay All Wages Due at the Time of Termination of Employment; (8) Irregular Pay Periods; (9) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy; (10) Failure to Reimburse Business Expenses; and (11) Violation of Unfair Competition Law. Plaintiff also filed a separate action alleging identical violations of the California Labor Code and seeking civil penalties under the PAGA on March 8, 2022, against

Defendants in the San Bernardino County Superior Court, Case No. CIVSB2204887. The Parties later agreed to consolidate both cases, with CIVSB2135245 designated as the lead case. Mara Dec. ¶ 10.

Defendants deny the allegations of the action in its entirety, deny any liability or wrongdoing of any kind associated with the claims alleged in this action, and further deny that, for any purpose other than settling this action, this matter is appropriate for class treatment. Defendants further contend that they have complied with all applicable California laws, the California Labor Code, the applicable California Wage Order(s), and the Unfair Competition Law. Defendants finally contend that, if this matter were to be litigated further, they would have strong defenses to oppose class certification and succeed on the merits of Plaintiff's causes of action. Mara Dec. ¶ 11.

b. Discovery and Investigation

Through discovery, Plaintiff sought numerous documents and substantial amounts of data that were needed to evaluate the case. These documents included requests for time and wage records for the Class, employee handbooks, policies, and practices in place during the class period, as well as data surrounding the number of current and former employees. Mara Dec. ¶ 12.

This discovery, in conjunction with the Parties' meet and confer efforts, resulted in the production of hundreds of documents, including Defendants' employee handbooks, policies, and practices, and a sampling of wage and time records for Plaintiff and Class Members. Using the time and wage records for the Class provided and the data surrounding the number of current and former employees, Plaintiff was able to establish a potential exposure model in preparation for mediation. Mara Dec. ¶ 13.

c. Settlement Negotiations

The Parties agreed to attend mediation with mediator Jeff Ross on September 20, 2023. After a full day of mediation, the Parties were able to reach a classwide settlement. Since then, the Parties have met and conferred regarding all the terms of the settlement and finalized their agreement in the Parties' Agreement. The Parties seek final approval of the Agreement in the instant motion. *See* Mara Dec. ¶ 14; **Exhibit 5**.

III. THE PROPOSED SETTLEMENT

a. The Terms of the Settlement

The Parties have agreed, subject to and contingent upon the Court's approval, that this action be settled and compromised for the non-reversionary total sum of $150,000 ("Gross Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of $50,000 (one-third of the GSA) to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administrating the settlement, and securing Court approval; (b) litigation costs of $18,293.45 (originally estimated not to exceed $20,000); (c) a Class Representative Enhancement Payment to the named class representative, Brandy Firman, in a sum not to exceed $7,500 in consideration for prosecuting this class action, serving as Class Representative, work performed, and risks undertaken for the payment of attorneys' fees and costs in the event she had been unsuccessful in the matter; (d) settlement administration fees and expenses to Apex in the amount of $6,500 (estimated not to exceed approximately $10,000); and (e) $2,000 allocated to Plaintiff's claims under the PAGA. Of this payment, 75%, or $1,500 will be provided to the LWDA, and 25%, or $500, will be available for distribution to Aggrieved Employees.[6]

b. Calculation of the Settlement Payments to Class Members

After all Court-approved deductions from the GSA, it is estimated that $65,706.55 ("Net Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement payment, will be distributed to Participating Class Members.[7] Subject to the terms and conditions of the settlement, each Participating Class Member will receive a portion of the Net Class Settlement Amount called their "Individual Class Settlement Share." An Individual Class

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[6] Aggrieved Employees are all current or former non-exempt hourly security patrol officer, security vehicle patrol officers, security guards, private security guards, dispatchers, field officers, flex officers, guards, and/or any similar job designations and titles, and all other similarly situated non-exempt hourly employees who worked for Defendants in California during the PAGA Period. **Exhibit 5** at Paragraph I(3). The PAGA Period is December 28, 2020 through July 20, 2022. **Exhibit 5** at Paragraph I(32).

[7] Participating Class Members are "[a]ll Class Members who do not submit a valid and timely request to exclude themselves from this Settlement." **Exhibit 5** at Paragraph I(34). If the Class Member is also an Aggrieved Employee, they will still be bound by the PAGA Settlement and will receive an Individual PAGA Settlement Payment as approved by the Court. **Exhibit 5** at Paragraph III(60)(E)(i).

Settlement Share will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. **Exhibit 5** at Paragraph III(56)(A)(i). Therefore, the value of each Class Member's Individual Class Settlement Share ties directly to the amount of weeks that he or she worked.

The Individual Class Settlement Share will be divided into a "wage portion" to compensate Participating Class Members for alleged unpaid wages, an "interest portion" to compensate Participating Class Members for alleged interest, and a "penalty portion" to compensate Participating Class Members for alleged penalties. The wage portion will make up one-third of each Participating Class Members' Individual Class Settlement Share, with the interest portion and the penalty portion each making up one-third of each Participating Class Members' Individual Class Settlement Share. **Exhibit 5** at Paragraph III(56)(B).

In addition, each Aggrieved Employee will receive a will receive a proportionate share of the PAGA Payment that is allocated for distribution to Aggrieved Employees (i.e., 25% of the PAGA Payment). The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($2,000) by the total number of weeks worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's weeks worked. **Exhibit 5** at Paragraph III(57)(A)(i). Therefore, the value of each Aggrieved Employees' PAGA Settlement Share ties directly to the amount of weeks that the Aggrieved Employees worked during the PAGA Period. Each Aggrieved Employee's Individual PAGA Settlement Share will be apportioned as 100% penalties. **Exhibit 5** at Paragraph III(57)(B).

Under no circumstances will any portion of the $150,000 settlement revert to Defendants and 100% of the NSA will be paid out to Participating Class Members. In addition, the employer's share of taxes will be paid in addition to and outside of the GSA.

c. Release of Claims

The Class Representative will be bound by a general release. *See* **Exhibit 5** at Paragraph III(63). In exchange for an Individual Class Settlement Share, all Participating Class Members will agree to the following release:

> The Released Class Claims include, for the entire Class Period, any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that were alleged in the Class Action.

Exhibit 5 at Paragraph I(37).

In addition, all Aggrieved Employees will agree to the following release in exchange for an Individual PAGA Settlement Share:

> The Released PAGA Claims include, for the entire PAGA Period, any and all claims for civil penalties under the California Labor Code and the Private Attorneys General Act predicated upon the Labor Code violations asserted, as well as any potential penalties, interest or attorneys' fees associated with those violations under California law, to the extent such claims are predicated on claims alleged in the PAGA Action and Plaintiff's notice to the LWDA.

Exhibit 5 at Paragraph I(38).

d. Class Notice Process

On June 24, 2024 and October 1, 2024, Defendants provided the Settlement Administrator with the Class Data. Nava Dec. ¶ 5. Prior to mailing, the Settlement Administrator conducted a National Change of Address (NCOA) search in an attempt to update the class list of addresses as accurately as possible. *Id*. at ¶ 6. A search of this database provides updated addresses for any individual who has moved in the previous four (4) years and notified the U.S. Postal Service of their change of address. On October 7, 2024, the Settlement Administrator mailed the Notices to 132 Class Members by U.S. First Class mail. *Id*. at ¶ 7.

After mailing, as of the filing of this motion, twenty-four (24) Notices were returned to the Settlement Administrator. Nava Dec. ¶ 8. The Settlement Administrator conducted a computerized skip trace on the returned Notices in order to acquire updated addresses for the purpose of re-mailing the Notices. *Id*. As a result, twenty-two (22) Notices with updated addresses were re-mailed via U.S. First Class Mail. Nava Dec. ¶ 9. As such, to date, two (2) Notices are considered undeliverable. Nava Dec. ¶ 10.

Class Members had until December 6, 2024 to respond to the settlement. To date, the settlement has received universal support from the Class Members. Not a single Class Member has submitted an objection or request for exclusion from the settlement, nor has any Class Member submitted a dispute as to the workweeks attributed to him or her. Nava Dec. ¶¶ 11-13. Therefore, all 132 Class Members are participating in the settlement, meaning 100% of the Class Members are Participating Class Members. *Id*. at ¶ 14.

e. Distribution of Settlement Funds

No later than thirty (30) days after the Effective Final Settlement Date,[8] Defendants shall provide the GSA to the Settlement Administrator to fund the Settlement and the employer's share of payroll taxes due on the portion of the Individual Settlement Payments that is allocated to wages. Not later than ten (10) business days after receiving the funds from Defendants, the Settlement Administrator shall disburse: (1) the Individual Settlement Shares to each Class Member and Aggrieved Employee; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court.

Class Members must cash or deposit their Individual Settlement Payment checks within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within one hundred and eighty (180) calendar days after mailing, the Settlement Administrator will transmit the funds to the State of California Controller's Office under the Unclaimed Property Statutes in the name of the Class Member.

IV. ARGUMENT

a. The Settlement is Fair, Reasonable, and Adequate and Satisfies the Standard for Final Approval

California Rule of Court, Rule 3.769, requires court approval for class action settlements. Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal*. (1951) 37 Cal. 2d 592, 602

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[8] "Effective Final Settlement Date" of the Settlement means when the final approval of the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the court grants final approval of the settlement, the date the court enters judgment granting final approval of the settlement.

("[T]he law wisely favors settlements"). Accordingly, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." *Wershba v. Apple Computer, Inc*. (2001) 91 Cal. App. 4th 224, 245.

In deciding whether to approve a class settlement, a court evaluates whether the proposed settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co*. (1996) 48 Cal. App. 4th 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of S.F.* (9th Cir. 1982) 688 F.2d 615, 625); *Cho v. Seagate Tech. Holdings, Inc*. (2009) 177 Cal. App. 4th 734, 742 43. A court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801. However, "a presumption of fairness exists where: (1) 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." *Dunk*, 48 Cal. App. 4th at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a court should consider additional relevant factors, including the strength of the plaintiff's case compared to the settlement amount; the risk, expenses, complexity, and likely duration of further litigation; and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th at 1802; see also *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723; see also *Boyd v. Bechtel Corp*. (N.D. Cal. 1979) 485 F. Supp. 610, 617.

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.[9] Subject only to the Class's reaction to the settlement, the Court preliminarily presumed the settlement was fair, adequate and reasonable. To date, not a single objection to the settlement has been submitted by any Class Member to the Settlement Administrator. Thus, the settlement is entitled to the presumption that it is fair and in all other respects proper and should be finally approved.

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[9] *See* Memorandum of Points and Authorities in Support of Motion for Preliminary Approval, pages 11-19. In addition to the *Dunk* factors, Class Counsel also detailed the other factors such as the strengths of Plaintiff's case, risks and costs of further litigation, as well as the reasonableness of the GSA amount in light of *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

b. The Court Should Approve the Requested Fees and Costs

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

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "'not be disturbed on appeal absent a manifest abuse of discretion.'" *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (The "experienced trial judge is the best judge of the value of professional services rendered in his court[.]"); *Cellphone Termination Fee Case*s (2009) 180 Cal.App.4th 1110, 1118.

California law provides that an attorneys' fee award should be equivalent to fees paid in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao,* the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Lealao*, *supra*, 82 Cal.App.4th at 50. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Lealao*, *supra*, 82 Cal.App.4th at 53. Therefore, fees in class and representative actions should approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id*. at 48.

"The ultimate goal . . . is the award of a 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of calculation." *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court*, *supra*, 126 Cal.App.4th at 1270). It is not an abuse of discretion to choose one method over another as long as the method chosen is applied consistently using percentage figures and/or rates that accurately reflect the marketplace. In cases where class members present claims against a settlement amount and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Lealao*, *supra*, 82 Cal.App.4th at 32.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th

Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F. Supp. 494 (awarding attorneys' fees in the amount of 45% of the settlement amount of $7.3 million); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195 (awarding approximately 53% of the settlement amount as attorneys' fees). California courts routinely approve class action attorneys' fees awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions). The Supreme Court has explained that "percentage of the fund method more accurately reflects the results achieved." *Laffitte*, 1 Cal. 5th at 439. In a similar wage and hour class action, *Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th 480 (2016), the California Supreme Court affirmed an award of attorneys' fees equal to 1/3 of the common fund. Here, the requested fee is at this same percentage, and evidences all of the same considerations which warranted the one-third fee in *Laffitte.*

In short, Class Counsel's fee request of $50,000 (which represents one-third of the GSA) is in line with awards in similar cases in California and nationwide and demonstrates that Class Counsel's fee request is consistent with market rates and is reasonable.

ii. The Requested Attorneys' Fee and Cost Award is Within the Range of Fees Approved in Comparable Common Fund Cases

Class Counsel applies for an award of attorneys' fees in the sum of $50,000 (one-third of the GSA), and litigation costs of $18,293.45. Mara Dec. ¶ 15. California state and federal courts have recognized that an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits made available to Class Members by the settlement, also known as the "common fund" method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.[10] Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14,

[10] The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

§ 14:145; *Dunk*, *supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in class and representative actions because "it better approximates the workings of the marketplace than the lodestar approach." *Lealao*, *supra*, 82 Cal.App.4th at 49. 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, supra*, 557 F.2d at 769.

In Quinn v. State of California (1995) 15 Cal.3d 162, 167, the 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 percentage-of-the-benefit approach has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying this equitable doctrine include: "…fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." *Id*.

Courts have consistently recognized that class action litigation is increasingly necessary to protect the rights of individuals whose injuries and/or damages are too small to economically justify legal action on an individual basis. Accordingly, in determining a reasonable fee award, courts award fees to serve as an economic incentive for lawyers to pursue such litigation in order to achieve increased access to the judicial system for meritorious claims and to enhance deterrents to wrongdoing. This is especially true in situations where multiple similar alleged wrongs would not be economically feasible to pursue individually, such as here. *See* A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at 6.

When the lawsuit was originally filed, the prospect of a long, drawn-out battle with a defendant represented by experienced counsel, was almost a certainty. By taking on this "battle" on a contingency basis, Class Counsel risked substantial economic loss if the results were not successful. This substantial risk is the reason that the courts approve the use of the percentage method when a settlement is obtained by the efforts of class counsel. *See Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49 (quotations omitted) (discussing the risks of engaging in litigation without certainty of compensation).

Under the terms of the Agreement, Defendants will pay a Gross Settlement Amount of $150,000. An award of attorneys' fees is to be calculated as a percentage of the total value of benefits made available to the Class Members under the settlement. In light of Class Counsel's prosecution and resolution of the case, the requested fees are appropriate and reasonable.

Compensating class counsel in class litigation on a percentage basis makes good sense because: (1) it is consistent with the private marketplace where contingent fee attorneys are customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent class members in achieving the maximum possible resolution of the case; and (3) it encourages the most efficient and expeditious resolution of the litigation by providing an incentive for early, yet reasonable, settlement. The requested fees in this matter satisfies all of those factors and should be approved on a percentage basis.

Class Counsel have obtained a substantial recovery on behalf of Plaintiff and the Class. Thus, the requested Attorney Fee Award is appropriate.

iii. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

Class Counsel's fee request is reasonable when calculated using the lodestar method. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20 Cal. 3d 25, 48. The court then enhances this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id*. at 49; see also *Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 834, ("[t]here is no … rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar").

Class Counsel has worked 144 hours to date on this case and have calculated the lodestar fee on those hours at $102,000 at rates reflecting those currently earned in the marketplace. Mara Dec. ¶ 16, **Exhibit 1**. Class Counsel respectfully request attorneys' fees in the amount of $50,000 (one-third of the GSA). All of the work and tasks performed by Class Counsel were reasonable and necessary to the prosecution of this case and are reflected in the result achieved. Mara Dec. ¶ 17. All services were performed by Class Counsel on a contingent basis. Mara Dec. ¶ 18. As Class Counsel's lodestar fee is in excess of their fee request, a multiplier on their lodestar fee is not sought herein. Mara Dec. ¶ 19. In fact, the requested fee results in a so-called "negative multiplier" which suggests the percentage of the fund amount is reasonable and fair. *See Chun-Hoon v. McKee Foods Corp*. (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software, Inc. Securities Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at *16.

iv. Class Counsel's Hourly Rates Are Reasonable

Class Counsel's hourly rates are between $600 and $800 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. Mara Dec. ¶¶ 21, 26; **Exhibit 2**, Westlaw Court Express's Legal Billing Report, Volume 14, Number 3, California Region for December 2012; **Exhibit 3**, 2014 Declaration of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; **Exhibit 4**, 2012 National Law Journal Survey of Hourly Billing Rates for Partners and Associates.

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc* (2000) 22 Cal. 4th 1084, 1095; *Hopson v. Hanesbrands Inc*. (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900. When determining a reasonable hourly rate, courts may consider factors such as the attorney's 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 Patro* (1998) 61 Cal. App. 4th 629, 632.

Class Counsel's skill and experience support their hourly rates. Their practice is limited exclusively to litigation, focusing on the representation of employees in wage and hour and consumer class action matters. Mara Dec. ¶¶ 2-8, 22-24. As leading attorneys in the field of wage and hour class action litigation, Plaintiff's 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/law clerks 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. Mara Dec., **Exh. 2**, Westlaw Court Express's Legal Billing Report, Volume 14, Number 3, California Region for December 2012; **Exh. 3**, 2014 Declaration of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; **Exh. 4**, 2012 National Law Journal Survey of Hourly Billing Rates for Partners and Associates. Therefore, as they are in line with those of the relevant community, Class Counsel's hourly rates are reasonable.

v. Class Counsels' 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 law, and preparing the pleadings. See *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447. Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639 ("*Serrano IV*"). Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

Class Counsel has expended a total of 144 hours on this case. The work performed by Class Counsel in order to achieve a settlement that will provide valuable consideration to the Class, averaging a $497.78 settlement payment per Class Member, with the highest estimated award being $2,397.41, is outlined by Class Counsel in the declaration submitted herewith. Mara Dec. ¶¶ 20, 25. Class Counsel have been actively involved in this case, prior to the commencement of this action and up to the present, and Class Counsel's dedication to providing representation in the case has precluded other employment. Here, Class Counsel's many tasks, in summary form, included the following: pre-filing investigation and legal research; communicating with the Class Representative; discussions with Class Members; researching and investigating California's ever-evolving wage and hour laws regarding compensation, overtime, meal and rest periods, itemized wage statements, waiting time penalties, and California's Unfair Competition Law; conducting investigation into Defendant's pay-structures, policies for its non-exempt employees; drafting and filing pleadings; drafting notice to the LWDA; making appearances at Court proceedings; engaging in numerous interoffice discussions and conferences with Defense Counsel regarding a variety of issues throughout the litigation and settlement; drafting stipulations; drafting and propounding discovery; reviewing documents produced by Defendant; drafting the mediation brief and exposure models; preparing for and attending mediation; drafting and revising the memorandum of understanding; drafting and revising the settlement agreement and the Notice to the Class; drafting preliminary approval papers; working with Settlement Administrator on the notice process; reviewing, revising, and proofing Notice papers from the Settlement Administrator; reviewing weekly status reports from the Settlement Administrator regarding Class participation; drafting final approval papers, and preparing for and appearing at the Final Approval Hearing. Mara Dec. ¶¶ 20, 25.

Class Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. All of the work performed was reasonable and necessary to the prosecution of this case. The work performed was particularly justified, in light of the extraordinary result achieved.

vi. Costs of Litigation

Class Counsel seeks reimbursement of the litigation costs and expenses of $18,293.45. Mara Dec. ¶ 27. These costs were all reasonable and necessary to the prosecution of this case and the results achieved and are fair and reasonable.

c. The Class Representative Enhancement Payment is Reasonable

Class Counsel seeks approval of a Class Representative Enhancement Payment to the named Plaintiff in the sum of $7,500. In agreeing to the settlement, Plaintiff also agreed to a general release of her claims. This release includes all claims, not just wage and hour claims. It should be noted that when the Class Notices were mailed and published, the Class was informed that the Class Representative would apply for this payment and, to date, no Class Members have objected.

There are also other factors supporting the request that Plaintiff receive $7,500. The requested award is appropriate and reasonable based upon Plaintiff's time and effort expended on this case, the risks she faced, and the outcome of this case, in addition to also being reasonable in light of the benefits Plaintiff has conferred upon the entire Class, Plaintiff has submitted a declaration detailing the efforts and time she expended on behalf of the Class in order to advance this case to its successful conclusion. There is no question that this case would not have reached the same result but for Plaintiff's involvement and input at all stages of the litigation.

There are few individuals that are willing to act as a class representative and provide the work, diligence, and willingness to assume a substantial financial risk should Defendants have prevailed in this case. Plaintiff's willingness to assume the financial risk is significant. Plaintiff risked a potential judgment taken against her for attorneys' fees and costs if this matter had not been successfully concluded. Case law holds that a losing party is liable for the prevailing party's costs, *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000), and in some wage and hour actions, such as this case, pursuant to California Labor Code § 218.5, for attorneys' fees as well. Though the fee agreement provides that Class Counsel would pay such costs, Plaintiff would nevertheless have had a cost bill entered against her leaving her ultimately liable for potentially hundreds of thousands of dollars in the unexpected possibility that Class Counsel did not meet their obligation to cover those costs. Unfortunately, there have been several judgments entered against class representatives, e.g. *Koehl v. Verio, Inc*. 142 Cal.App.4th 1313, 1328 (2006) (a wage and hour class action where Defendant prevailed at trial, the named plaintiffs were held liable, jointly and severally for the Defendant's attorneys' fees); *Whiteway v. Fedex Kinkos Office & Print Services, Inc.,* 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. 2007) (a wage and hour misclassification case lost on summary judgment, after the case was certified, the named Plaintiff was assessed costs in the sum of $56,788.). The risk of payment of Defendants' costs, in itself alone, is a sufficient basis for an award of the requested enhancement. Few are willing to take this risk, and it is clear that Plaintiff, here, championed a cause on behalf of others with potentially huge consequences.

Courts routinely approve service payments, or incentive awards, to compensate named plaintiffs 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. Exch*. (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives); Manual § 21.62 n.971 (noting that service payments are warranted); *Cook v. Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y. 1997) ("present or past employee whose present position or employment credentials or recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his or her name and efforts to the prosecution of litigation at some personal peril, a substantial enhancement award is justified"); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) ("We also think there is something to be said for rewarding those drivers who protect and help to bring rights to a group of employees who have been the victims of discrimination.").

Additionally, it is common knowledge that the modern-day work force is quite mobile, with employees holding several jobs in a career during their lifetime. It is also true that prospective employers in this computer, high-tech age "Google" and/or do extensive background checks and have access to Court databases to see if applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiff cost her former employer a substantial sum of money by her courage to step forward to vindicate not only her own rights but also, those of the similarly situated individuals, all of whom will now receive substantial payments due to the initiation of this action. Such conduct will not be lost on a prospective employer who has to choose between an applicant who has never sued an employer and one who has done so. The requested enhancement far from compensates Plaintiff for opportunities she may lose in the future because of the exercise of a Constitutional right to Petition the Courts for redress of a grievance.

Based on the foregoing, the $7,500 Class Representative Enhancement Payment to the named Class Representative is fair, appropriate, and justified in light of the work performed, risks undertaken for payment of fees and costs if this case had not been successfully concluded, stigma on future employment opportunities, and the benefits all Class Members.

d. The Administration Costs are Reasonable

The Court-approved Settlement Administrator was responsible for formatting, printing and mailing the Class Notices. The Settlement Administrator was responsible for responding to Class Member inquiries, providing weekly status reports, answering questions from Counsel for the Parties, and providing a declaration to document its duties and responsibilities under the settlement. Plaintiff now requests that the Court finally approve the Settlement Administration Costs in the amount of $6,500 to Apex for services rendered and to be rendered for the notice and settlement administration process.

Following the grant of final approval, the Settlement Administrator's duties will continue in order to calculate and mail the individual settlement payments to Participating Class Members, perform tax reporting obligations, disburse other payments as ordered by the Court, and perform such other duties as set forth in the Agreement. Administration Costs in the amount of $6,500 to Apex for services rendered and to be rendered is fair and reasonable and should be granted.

V. CONCLUSION

Based on the foregoing, Class Counsel respectfully requests the Court grant final approval of the settlement, and award Class Counsel attorneys' fees in the sum of $50,000 and litigation expenses of $18,293.45, Class Representative Enhancement Payment in the sum of $7,500 to Plaintiff, Administration Costs in the amount of $6,500 to Apex, and a payment to the LWDA in the amount of $1,500 (which is 75% of $2,000 allocated to Plaintiff's claims under PAGA).

Dated: January 6, 2025

MARA LAW FIRM, PC

David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff BRANDY FIRMAN on behalf of herself, all others similarly situated, and on behalf of the general public