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9 on behalf of herself and all others similarly situated
10 and on behalf of the general public

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF LOS ANGELES**

13 GABRIELA GUEVARA, on behalf of
14 herself and all others similarly situated, and
15 on behalf of the general public,

16 Plaintiffs,

17 v.

18 AGUILASMORALES, INC.; and DOES 2-
19 100,

20 Defendants.

Case No. 21STCV47592

[Related to Case No. 22STCV08424]

**PLAINTIFF GABRIELA GUEVARA'S
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT**

Date: June 5, 2024

Time: 10:30 a.m.

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND, INVESTIGATION, AND LITIGATION HISTORY 3

 a. Litigation History..... 3

 b. Discovery and Investigation 3

 c. Settlement Negotiations 4

III. THE PROPOSED SETTLEMENT 4

 a. The Terms of the Settlement..... 4

 b. Calculation of the Settlement Payments to Class Members 5

 c. Release of Claims 6

 d. Class Notice Process 6

 e. Distribution of Settlement Funds 7

 f. Final Judgment..... 9

IV. ARGUMENT 9

 a. The Settlement is Fair, Reasonable, and Adequate and Satisfies the Standard for Final Approval 9

 b. The Court Should Approve the Requested Fees and Costs 10

 i. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage of a Common Fund 10

 ii. The Requested Attorneys’ Fee and Cost Award is Within the Range of Fees Approved in Comparable Common Fund Cases 11

 iii. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee 13

 iv. Class Counsel’s Hourly Rates Are Reasonable 14

 v. Class Counsels’ Total Hours are Reasonable 15

1	vi. Costs of Litigation.....	16
2	c. The Class Representative Enhancement Payment is Reasonable	17
3	d. The Administration Costs are Reasonable.....	19
4		
5	V. CONCLUSION.....	19
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

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(2004) 115 Cal. App. 4th 715 18

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(1980) 444 U.S. 472..... 12

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(N.D. Cal. 1979) 485 F. Supp. 610 9

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(2009) 180 Cal.App.4th 1110 10

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(2008) 162 Cal.App.4th 43 11

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(1996) 48 Cal. App. 4th 1794 9, 10

Early v. Superior Court

(2000) 79 Cal.App.4th 1420 17

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12	(2010) 186 Cal. App. 4th 1380	18
13	<i>In re Microsoft I-V Cases</i>	
14	(2006) 135 Cal. App. 4th 706	9
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16	(N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201	14
17	<i>Ketchum v. Moses</i>	
18	(2001) Cal.4th 1122	10, 14
19	<i>Koehl v. Verio, Inc.</i>	
20	(2006) 142 Cal.App.4th 1313	17
21	<i>Kullar v. Foot Locker Retail, Inc.</i>	
22	(2008) 168 Cal.App.4th 116	10
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25	<i>Lealao v. Beneficial Cal., Inc.</i>	
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2	(N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95398	18
3	Other Authorities	
4	2012 National Law Journal Survey of Hourly Billing Rates for Partners and Associates	14
5	A. Conte, <i>Attorney Fee Awards</i> (2d Ed., 1993)	13
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8		
9		
10		
11		
12		
13		
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1 **I. INTRODUCTION**

2 This motion seeks approval of a non-reversionary \$350,000 proposed wage and hour class
3 action settlement reached between Plaintiff Gabriela Guevara (hereinafter “Plaintiff”) and
4 Defendant AguilasMorales, Inc. (hereinafter “Defendant”) (hereinafter Plaintiff and Defendant are
5 collectively referred to as the “Parties”).¹ The settlement is on behalf of Plaintiff and a Class
6 comprised of all individuals who worked for Defendant as non-exempt hourly employees in
7 California at any time during the Class Period.² The Class Period is December 30, 2017 through
8 September 19, 2023. This motion also seeks an order entering judgment.

9 On February 5, 2024, the Settlement Administrator mailed Class Notices to all 86 Class
10 Members.³ These Class Members had until March 21, 2024, to request to be excluded from the
11 settlement, to object to the settlement, or submit a dispute regarding the number of workweeks that
12 Class Members were credited to have worked. As of the date of this filing, the Settlement
13 Administrator has not received any disputes regarding the number of workweeks that Class
14 Members were credited to have worked, nor has the Settlement Administrator received any
15 objections to the settlement or requests for exclusion from the settlement.⁴

16 To date, this matter has required 198 hours of attorney time from Class Counsel. This
17 litigation involved investigations into the claims asserted, discovery, the production and review of
18 documents from Defendant, a full day of mediation, and evaluation of continuing litigation.

19 As will be demonstrated herein, the attorneys’ fee request of \$116,666.66 (“Attorney Fee
20 Award”), which represents one-third of the Gross Settlement Amount (“GSA”), is fully supported
21 using the percentage fee method. The Attorney Fee Award is also supported under the lodestar
22 cross-check method. Plaintiff further moves for reimbursement of litigation costs and expenses in
23 the amount of \$15,606.90 (“Cost Award”), originally estimated not to exceed \$20,000, for costs
24

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

27 ² **Exhibit 5** at Paragraph I(E).

28 ³ Declaration of Madely Nava of Apex Class Action, LLC, in Support of Motion for Final
Approval of Class Action Settlement (“Nava Dec.”) ¶ 7.

⁴ Nava Dec. ¶¶ 11-13.

1 incurred in litigating this matter. Plaintiff also moves for final approval of the payment in the
2 amount of \$7,500 to Plaintiff (this payment is referred to as the “Class Representative
3 Enhancement Payment”) to compensate her for agreeing to a general release of her claims against
4 Defendant and her vital role in representing the Class Members and spearheading the case to seek
5 actual and substantial monetary relief for the Class. Additionally, Plaintiff moves for final approval
6 of Administration Costs in the amount of \$8,850, originally estimated not to exceed \$10,000, to
7 the Settlement Administrator, Apex Class Action Administration (hereinafter “Apex”) for the costs
8 and fees of administering settlement (“Administration Costs”).

9 The requested Attorney Fee Award, Cost Award, Class Representative Enhancement
10 Payment, and Administration Costs were fully disclosed to the Class Members when the Class
11 Notice was mailed to them. Most importantly, to date, the settlement and all of its terms have
12 received support from Class Members as not a single Class Member has objected to the settlement
13 or requested to be excluded from it. **With a currently estimated average and high payout to**
14 **Settlement Class Members of \$2,109.03 and \$6,630.59, respectively, the settlement is fair,**
15 **adequate, and reasonable.** The Court is, therefore, respectfully requested to consider the Class
16 Members’ endorsement of the settlement and grant final approval of the settlement, and approve
17 of the Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, and
18 Administration Costs in the amounts as preliminarily approved of by this Court and disclosed to
19 the Class Members, and as requested herein.

20 As demonstrated herein, Class Counsel is convinced that the proposed settlement is in the
21 best interest of the Class based on the negotiations and a detailed knowledge of the issues present
22 in this matter. The length and risks of trial and perils of litigation that affect the value of the claims
23 were all carefully weighed by Class Counsel. In addition, the affirmative defenses asserted by
24 Defendant, Defendant’s contentions that Class Members were compensated for all wages due and
25 provided lawful meal and rest breaks, the uncertainty of class certification, the difficulties of
26 complex litigation, the lengthy process of establishing specific damages, and various possible
27 delays and appeals were all carefully considered by Class Counsel in arriving at the proposed
28 settlement.

II. BACKGROUND, INVESTIGATION, AND LITIGATION HISTORY

a. Litigation History

Defendant AguilasMorales, Inc. (“Defendant”) operates a restaurant in the Los Angeles area under the name “Paseo San Miguel.” On December 30, 2021, Plaintiff commenced this action by filing a class action complaint alleging causes of action against Defendant for 1) Failure to Pay All Straight Time Wages; 2) Failure to Pay Overtime; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Rest Periods; 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; 6) Failure to Pay all Wages Due at the Time of Termination; 7) Irregular Pay Periods; 8) Failure to Adopt a Compliant Sick Pay Policy; and 9) Violation of Unfair Competition Law. Mara Dec. ¶ 9.

On December 28, 2021, Plaintiff provided notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant in accordance with the Private Attorneys General Act of 2004 (“PAGA”).⁵ On March 8, 2022, Plaintiff filed a PAGA action which seeks civil penalties pursuant to Cal. Lab. Code 2699 *et seq.* for 1) Failure to Pay All Straight Time Wages; 2) Failure to Pay Overtime; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Rest Periods; 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; 6) Failure to Pay all Wages Due at the Time of Termination; 7) Failure to Pay All Wages Twice Per Month; and 8) Failure to Adopt a Compliant Sick Pay Policy. The PAGA action was related with the class action on or around June 8, 2022. Mara Dec. ¶ 10.

b. Discovery and Investigation

After filing, the Parties engaged in discovery. These discovery efforts led to Defendant producing policy documents, such as the employee handbooks that covered employees’ employment with Defendant, and time and wage records. Included within these documents were Defendant’s wage and hour policies, including its meal and rest period policies. Defendant also produced time and wage records for an approximate 57% sampling of the Class Members which

⁵ The Notice to the LWDA dated December 28, 2021 is attached to the Declaration of David Mara as **Exhibit 6**. Plaintiff’s Amended Notice dated July 6, 2022 (naming the correct employer entity) is attached to the Declaration of David Mara as **Exhibit 7**.

1 Plaintiff's Counsel had analyzed with the assistance of an expert. These records consisted of the
2 entirety of the time and wage records from 2017 through 2021. As such, the sampling should be
3 reflective of the entire Class. With the assistance of her expert, Plaintiff was able to use these
4 records to obtain the data points needed to establish a potential exposure model in preparation for
5 mediation. Defendant further produced Plaintiff's personnel file and time and pay records. The
6 Parties also engaged in the *Belair-West* notice process to obtain the contact information for the
7 putative class members. From this discovery, Plaintiff and her Counsel were able to analyze
8 Defendant's liability in this action and prepare a realistic damage model. Mara Dec. ¶ 11.

9 **c. Settlement Negotiations**

10 The Parties attended an all-day mediation presided over by Honorable Joan Lewis (Ret.)
11 on July 21, 2023. This mediation was successful. The Parties then met and conferred over all the
12 terms of the settlement and finalized their settlement in the Parties' Agreement. The Parties seek
13 final approval of the Agreement in the instant motion. *See* Mara Dec. ¶ 12; **Exhibit 5**.

14 **III. THE PROPOSED SETTLEMENT**

15 **a. The Terms of the Settlement**

16 The Parties have agreed, subject to and contingent upon the Court's approval, that this
17 action be settled and compromised for the non-reversionary total sum of \$350,000 ("Gross
18 Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of
19 \$116,666.66 (one-third of the GSA) to compensate Class Counsel for work already performed and
20 all work remaining to be performed in documenting the settlement, administering the settlement,
21 and securing Court approval; (b) litigation costs of \$15,606.90 (originally estimated not to exceed
22 \$20,000); (c) a Class Representative Enhancement Payment to the named class representative,
23 Gabriela Guevara, in a sum not to exceed \$7,500 in consideration for prosecuting this class action,
24 serving as Class Representative, work performed, and risks undertaken for the payment of
25 attorneys' fees and costs in the event she had been unsuccessful in the matter; (d) settlement
26 administration fees and expenses to Apex in the amount of \$8,850 (estimated not to exceed
27 approximately \$10,000); and (e) \$20,000 allocated to Plaintiff's claims under the PAGA. Of this
28 payment, 75%, or \$15,000 will be provided to the LWDA, and 25%, or \$5,000, will be available

1 for distribution to Aggrieved Employees.⁶

2 **b. Calculation of the Settlement Payments to Class Members**

3 After all Court-approved deductions from the GSA, it is estimated that \$181,376.44 (“Net
4 Settlement Amount” or “NSA”), less employee taxes on the “wage portion” of the settlement
5 payment, will be distributed to Participating Class Members.⁷ Subject to the terms and conditions
6 of the settlement, each Participating Class Member will receive a portion of the Net Class
7 Settlement Amount called their “Individual Class Settlement Share.” An Individual Class
8 Settlement Share will be calculated by (a) dividing the Net Settlement Amount by the total number
9 of Workweeks worked by all Participating Class Members during the Class Period and (b)
10 multiplying the result by each Participating Class Member’s Workweeks. **Exhibit 5** at Paragraph
11 III(F)(1)(a). Therefore, the value of each Class Member’s Individual Class Settlement Share ties
12 directly to the amount of weeks that he or she worked.

13 The Individual Class Settlement Share will be divided into a “wage portion” to compensate
14 Participating Class Members for alleged unpaid wages, an “interest portion” to compensate
15 Participating Class Members for alleged interest, and a “penalty portion” to compensate
16 Participating Class Members for alleged penalties. The wage portion, the interest portion, and the
17 penalty portion will each make up 33 1/3% of each Participating Class Members’ Individual Class
18 Settlement Share. **Exhibit 5** at Paragraph III(F)(2).

19 In addition, each Aggrieved Employee will receive a will receive a proportionate share of
20 the PAGA Payment that is allocated for distribution to Aggrieved Employees (i.e., 25% of the
21 PAGA Payment). The Administrator will calculate each Individual PAGA Payment by (a) dividing
22 the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$5,000) by the total
23 number of weeks worked by all Aggrieved Employees during the PAGA Period and (b)

24
25 ⁶ Aggrieved Employees are all individuals who worked for Defendant as non-exempt hourly
26 employees in California during the PAGA Period. **Exhibit 5** at Paragraph I(C). The PAGA Period
is December 28, 2020 through September 19, 2023. **Exhibit 5** at Paragraph I(GG).

27 ⁷ Participating Class Members are “[a]ll Class Members who do not submit a valid and timely
28 request to exclude themselves from this Settlement.” **Exhibit 5** at Paragraph I(HH). 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(J)(4)(a).

1 multiplying the result by each Aggrieved Employee's weeks worked. **Exhibit 5** at Paragraph
2 III(G)(1)(a). Therefore, the value of each Aggrieved Employees' PAGA Settlement Share ties
3 directly to the amount of weeks that the Aggrieved Employees worked during the PAGA Period.
4 Each Aggrieved Employee's Individual PAGA Settlement Share will be apportioned as 100%
5 penalties. **Exhibit 5** at Paragraph III(G)(2).

6 **Under no circumstances will any portion of the \$350,000 settlement revert to**
7 **Defendant and 100% of the NSA will be paid out to Participating Class Members. In**
8 **addition, the employer's share of taxes will be paid in addition to and outside of the GSA.**

9 **c. Release of Claims**

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

13 [A]ny and all claims, debts, liabilities, demands, obligations, penalties, guarantees,
14 costs, expenses, attorney's fees, damages, action or causes of action of whatever
15 kind or nature, whether known or unknown, contingent or accrued, that are alleged
16 or could have been alleged during the Class Period based upon a reasonable
interpretation of the facts alleged in the Class Action against Defendant. The release
as to these claims will be deemed effective when Defendant funds the settlement.

17 **Exhibit 5** at Paragraph I(KK).

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

20 [A]ny and all claims for civil penalties under the California Labor Code and the
21 Private Attorneys General Act predicated upon the Labor Code violations asserted,
22 as well as any potential penalties, interest or attorneys' fees associated with those
23 violations under California law, to the extent such claims are predicated on claims
24 made or that could have been made during the PAGA Period based on the facts and
25 circumstances alleged in the PAGA Action and Plaintiff's notice to the LWDA
against Defendant. Aggrieved Employees will release the Released PAGA Claims
even if they opted-out/requested exclusion from the Class Settlement. The release
as to these claims will be deemed effective when Defendant funds the settlement.

26 **Exhibit 5** at Paragraph I(LL).

27 **d. Class Notice Process**

28 On January 26, 2024, Defendant provided the Settlement Administrator with the Class

1 Data. Nava Dec. ¶ 5. Prior to mailing, the Settlement Administrator conducted a National Change
2 of Address (NCOA) search in an attempt to update the class list of addresses as accurately as
3 possible. *Id.* at ¶ 6. A search of this database provides updated addresses for any individual who
4 has moved in the previous four (4) years and notified the U.S. Postal Service of their change of
5 address. On February 5, 2024, the Settlement Administrator mailed the Notices to 86 Class
6 Members by U.S. First Class mail in English and Spanish. *Id.* at ¶ 7.

7 After mailing, as of the filing of this motion, twenty-five (25) Notices were returned to the
8 Settlement Administrator. Nava Dec. ¶ 8. Of the twenty-five (25) returned Notices, four (4) were
9 returned with a forwarding address. *Id.* Therefore, the Settlement Administrator conducted a
10 computerized skip trace on the remaining twenty-one (21) returned Notices in order to acquire
11 updated addresses for the purpose of re-mailing the Notices. *Id.* This skip trace effort resulted in
12 obtaining seven (7) updated address, to which Settlement Administrator re-mailed the Notice via
13 U.S. First Class Mail. *Id.* As such, to date, fourteen (14) Notices are considered undeliverable.
14 Nava Dec. ¶ 10.

15 Class Members had until March 21, 2024 to respond to the settlement. To date, the
16 settlement has received universal support from the Class Members. Not a single Class Member
17 has submitted an objection or request for exclusion from the settlement, nor has any Class Member
18 submitted a dispute as to the workweeks attributed to him or her. Nava Dec. ¶¶ 11-13. Therefore,
19 all 86 Class Members are participating in the settlement, meaning 100% of the Class Members are
20 Participating Class Members. *Id.* at ¶ 14.

21 **e. Distribution of Settlement Funds**

22 The GSA will be funded and disbursed in two installments. Defendant shall fund and
23 deliver to the Settlement Administrator the First Installment, which shall be comprised \$150,000,
24 plus the applicable Employer Taxes. Defendant shall fund and deliver to the Settlement
25 Administrator the First Installment either sixty (60) calendar days after the Effective Final
26 Settlement Date.⁸ Within ten (10) calendar days after receiving the First Installment, the Settlement

27
28 ⁸ The effective date of this Settlement will be 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

1 Administrator shall disburse: (1) 42.85% of the Net Settlement Amount to Participating Class
2 Members; (2) 42.85% of the Attorneys Fee Award and Cost Award to Class Counsel; (3) 42.85%
3 of the Class Representative Enhancement Payment to the Class Representative; (4) 42.85% of the
4 Administration Costs to itself; and (5) 42.85% of the PAGA Payment to the LWDA and PAGA
5 Aggrieved Employees. **Exhibit 5** at Paragraphs III(J)(11)(a) – (b).

6 The Second Installment shall be comprised of \$200,000, plus the applicable Employer
7 Taxes. Defendant shall fund and deliver to the Settlement Administrator the Second Installment
8 ten (10) months after the First Installment was funded. Within ten (10) calendar days after
9 receiving the Second Installment, the Settlement Administrator shall disburse: (1) 57.15% of the
10 Net Settlement Amount to Participating Class Members; (2) 57.15% of the Attorneys Fee Award
11 and Cost Award to Class Counsel; (3) 57.15% of the Class Representative Enhancement Payment
12 to the Class Representative; (4) 57.15% of the Administration Costs to itself; and (5) 57.15% of
13 the PAGA Payment to the LWDA and PAGA Aggrieved Employees. **Exhibit 5** at Paragraphs
14 III(J)(11)(a) – (b).

15 Participating Class Members and Aggrieved Employees must cash or deposit their
16 Individual Class Settlement Share and Individual PAGA Settlement Share checks within one
17 hundred and eighty (180) calendar days after the checks are mailed to them. **Exhibit 5** at Paragraph
18 III(J)(13). If any checks are not redeemed or deposited within ninety (90) calendar days after
19 mailing, the Settlement Administrator will send a reminder postcard indicating that unless the
20 check is redeemed or deposited in the next ninety (90) days, it will expire and become non-
21 negotiable, and offer to replace the check if it was lost or misplaced. **Exhibit 5** at Paragraph
22 III(J)(13)(a). If any checks remain uncashed or not deposited by the expiration of the 90-day period
23 after mailing the reminder notice, the Settlement Administrator will, within two hundred (200)
24 calendar days after the checks are mailed, cancel the checks. All funds associated with the
25 Individual Class Settlement Share and PAGA Settlement Share checks returned as undeliverable
26 and funds associated with those checks remaining un-cashed, shall escheat to the State of

27 _____
28 court grants final approval of the settlement, the date the court enters judgment granting final
approval of the settlement.

California Controller's Office under the Unclaimed Property Statutes in the name of the Class Member and/or Aggrieved Employee. **Exhibit 5** at Paragraph III(J)(13)(b)

f. Final Judgment

Pursuant to Cal. Rules of Court, Rule 3.771(b), notice of the final judgment will be posted on the Settlement Administrator's website. *See Exhibit 5* at Paragraph III(I).

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 (“[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

1 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
2 until after the Class had an opportunity to respond to the settlement.⁹ Subject only to the Class’s
3 reaction to the settlement, the Court preliminarily presumed the settlement was fair, adequate and
4 reasonable. To date, not a single objection to the settlement has been submitted by any Class
5 Member to the Settlement Administrator. Thus, the settlement is entitled to the presumption that
6 it is fair and in all other respects proper and should be finally approved.

7 **b. The Court Should Approve the Requested Fees and Costs**

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

10 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
11 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
12 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
13 1132 (The “experienced trial judge is the best judge of the value of professional services rendered
14 in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.

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

26 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their

27 ⁹ See Memorandum of Points and Authorities in Support of Renewed Motion for Preliminary
28 Approval, pages 16-23. 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.

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

8 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
9 depending on the circumstances of the case. *Conte & Newberg, Newberg on Class Actions* (4th
10 Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F. Supp. 494
11 (awarding attorneys’ fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*
12 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195 (awarding
13 approximately 53% of the settlement amount as attorneys’ fees). California courts routinely
14 approve class action attorneys’ fees awards “averag[ing] around one-third of the recovery.” *Chavez*
15 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of
16 contingency fee in marketplace was appropriate in class actions). The Supreme Court has explained
17 that “percentage of the fund method more accurately reflects the results achieved.” *Laffitte*, 1 Cal.
18 5th at 439. In a similar wage and hour class action, *Laffitte v. Robert Half International, Inc.*, 1
19 Cal. 5th 480 (2016), the California Supreme Court affirmed an award of attorneys’ fees equal to
20 1/3 of the common fund. Here, the requested fee is at this same percentage, and evidences all of
21 the same considerations which warranted the one-third fee in *Laffitte*.

22 In short, Class Counsel’s fee request of \$116,666.66 (which represents one-third of the
23 GSA) is in line with awards in similar cases in California and nationwide and demonstrates that
24 Class Counsel’s fee request is consistent with market rates and is reasonable.

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

27 Class Counsel applies for an award of attorneys’ fees in the sum of \$116,666.66 (one-third
28 of the GSA), and litigation costs of \$15,606.90. Mara Dec. ¶ 13. California state and federal courts

1 have recognized that an appropriate method for determining an award of attorneys' fees is based
2 on a percentage of the total value of benefits made available to Class Members by the settlement,
3 also known as the "common fund" method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (*Serrano*
4 *III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th
5 Cir. 1977) 557 F.2d 759, 769.¹⁰ Where the amount of a settlement is a "certain easily calculable
6 sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the
7 settlement. Weil and Brown, California Practice Guide, Civil Procedure Before Trial, Chapter 14,
8 § 14:145; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is
9 preferred in class and representative actions because "it better approximates the workings of the
10 marketplace than the lodestar approach." *Lealao, supra*, 82 Cal.App.4th at 49. The purpose of
11 the common fund/percentage approach is to "spread litigation costs proportionally among all the
12 beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent, supra*,
13 557 F.2d at 769.

14 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: "[O]ne who
15 expends attorneys' fees in winning a suit which creates a fund from which others derive benefits
16 may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in
17 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme
18 Court recognized that the percentage-of-the-benefit approach has been applied "consistently in
19 California when an action brought by one party creates a fund in which other persons are entitled
20 to share." The reasons for applying this equitable doctrine include: "...fairness to the successful
21 litigant, who might otherwise receive no benefit because his recovery might be consumed by the
22 expenses; correlative prevention of an unfair advantage to the others who are entitled to share in
23 the fund and who should bear their share of the burden of its recovery; encouragement of the
24 attorney for the successful litigant, who will be more willing to undertake and diligently prosecute
25 proper litigation for the protection or recovery of the fund if he is assured that he will be properly
26 and directly compensated should his efforts be successful." *Id.*

26 Courts have consistently recognized that class action litigation is increasingly necessary to
27 protect the rights of individuals whose injuries and/or damages are too small to economically

28 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.

1 justify legal action on an individual basis. Accordingly, in determining a reasonable fee award,
2 courts award fees to serve as an economic incentive for lawyers to pursue such litigation in order
3 to achieve increased access to the judicial system for meritorious claims and to enhance deterrents
4 to wrongdoing. This is especially true in situations where multiple similar alleged wrongs would
5 not be economically feasible to pursue individually, such as here. *See* A. Conte, *Attorney Fee*
6 *Awards* (2d Ed., 1993) 104, at 6.

7 When the lawsuit was originally filed, the prospect of a long, drawn-out battle with a
8 defendant represented by experienced counsel, was almost a certainty. By taking on this “battle”
9 on a contingency basis, Class Counsel risked substantial economic loss if the results were not
10 successful. This substantial risk is the reason that the courts approve the use of the percentage
11 method when a settlement is obtained by the efforts of class counsel. *See Vizcaino v. Microsoft*
12 (9th Cir. 2002) 290 F.3d 1043, 1048-49 (quotations omitted) (discussing the risks of engaging in
litigation without certainty of compensation).

13 Under the terms of the Agreement, Defendant will pay a Gross Settlement Amount of
14 \$350,000. An award of attorneys’ fees is to be calculated as a percentage of the total value of
15 benefits made available to the Class Members under the settlement. In light of Class Counsel’s
16 prosecution and resolution of the case, the requested fees are appropriate and reasonable.

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

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

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

28 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

1 on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20
2 Cal. 3d 25, 48. The court then enhances this lodestar figure by a “multiplier” to account for a range
3 of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
4 success achieved. *Id.* at 49; see also *Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM*
5 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92
6 Cal.App.4th 819, 834, (“[t]here is no ... rule limiting the factors that may justify an exercise of
7 judicial discretion to [adjust the] lodestar”).

8 Class Counsel has worked 198 hours to date on this case and have calculated the lodestar
9 fee on those hours at \$134,850 at rates reflecting those currently earned in the marketplace. Mara
10 Dec. ¶ 14, **Exhibit 1**. Class Counsel respectfully request attorneys’ fees in the amount of
11 \$116,666.66 (one-third of the GSA). All of the work and tasks performed by Class Counsel were
12 reasonable and necessary to the prosecution of this case and are reflected in the result achieved.
13 Mara Dec. ¶ 15. All services were performed by Class Counsel on a contingent basis. Mara Dec.
14 ¶ 16. As Class Counsel’s lodestar fee is in excess of their fee request, a multiplier on their lodestar
15 fee is not sought herein. Mara Dec. ¶ 17. In fact, the requested fee results in a so-called “negative
16 multiplier” which suggests the percentage of the fund amount is reasonable and fair. *See Chun-*
17 *Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software, Inc.*
18 *Securities Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at *16.

19 **iv. Class Counsel’s Hourly Rates Are Reasonable**

20 Class Counsel’s hourly rates are between \$600 and \$750 and are in line with rates typically
21 approved in wage and hour class action litigation and which rates have been approved by Courts
22 in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego
23 County Superior Courts. Mara Dec. ¶¶ 19, 24; **Exhibit 2**, Westlaw Court Express’s Legal Billing
24 Report, Volume 14, Number 3, California Region for December 2012; **Exhibit 3**, 2014 Declaration
25 of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; **Exhibit 4**, 2012
26 National Law Journal Survey of Hourly Billing Rates for Partners and Associates.

27 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
28 experience in the relevant community. *PLCM Group, Inc* (2000) 22 Cal. 4th 1084, 1095; *Hopson*

1 v. *Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900. When determining a
2 reasonable hourly rate, courts may consider factors such as the attorney's skill and experience, the
3 nature of the work performed, the relevant area of expertise and the attorney's customary billing
4 rates. *Flannery v. California Highway Patro* (1998) 61 Cal. App. 4th 629, 632.

5 Class Counsel's skill and experience support their hourly rates. Their practice is limited
6 exclusively to litigation, focusing on the representation of employees in wage and hour and
7 consumer class action matters. Mara Dec. ¶¶ 2-8, 20-22. As leading attorneys in the field of wage
8 and hour class action litigation, Plaintiff's counsel continually monitors the prevailing market rates
9 charged by both defense and plaintiff law firms and set the billing rates of their attorneys and
10 paralegals/law clerks to be consistent with the prevailing market rates in the private sector for
11 attorneys and staff of comparable skill, qualifications and experience. Other wage and hour
12 attorneys working as class counsel before California courts charge comparable if not higher rates.
13 Mara Dec., **Exh. 2**, Westlaw Court Express's Legal Billing Report, Volume 14, Number 3,
14 California Region for December 2012; **Exh. 3**, 2014 Declaration of Richard M. Pearl in *Hohnbaum*
15 *v. Brinker Restaurant Corp.* SDSC GIC834348; **Exh. 4**, 2012 National Law Journal Survey of
16 Hourly Billing Rates for Partners and Associates. Therefore, as they are in line with those of the
17 relevant community, Class Counsel's hourly rates are reasonable.

18 **v. Class Counsels' Total Hours are Reasonable**

19 In determining a lodestar fee, reasonable hours include, in addition to time spent during
20 litigation, the time spent before the action was filed, including time spent interviewing clients,
21 investigating the facts and law, and preparing the pleadings. See *New York Gaslight Club, Inc. v.*
22 *Carey* (1980) 447 U.S. 54, 62; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th
23 440, 447. Further, the fee award should include fees incurred to establish and defend the attorneys'
24 fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639 ("*Serrano IV*"). Under California law,
25 counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

26 Class Counsel has expended a total of 198 hours on this case. The work performed by Class
27 Counsel in order to achieve a settlement that will provide valuable consideration to the Class,
28 **averaging a \$2,109.03 settlement payment per Class Member, with the highest estimated**

award being \$6,630.59, is outlined by Class Counsel in the declaration submitted herewith. Mara Dec. ¶¶ 18, 23. 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; making appearances at Court proceedings; engaging in numerous conferences with Defense Counsel regarding a variety of issues throughout the litigation and settlement; drafting and propounding discovery; reviewing and meeting and conferring over Defendant's discovery responses; conducting the *Belaire-West* notice process to obtain class contact information; analyzing records produced by Defendant with the assistance of expert; drafting the mediation brief and exposure models; preparing for and attending mediation; 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 settlement website; reviewing weekly status reports from the Settlement Administrator regarding Class participation; reviewing and editing the Settlement Administrator's declaration; drafting final approval papers, and preparing for and appearing at the Final Approval Hearing. Mara Dec. ¶¶ 18, 23.

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 \$15,606.90. Mara Dec. ¶ 25. These costs were all reasonable and necessary to the prosecution of this case and the results achieved and are fair and reasonable.

1 **c. The Class Representative Enhancement Payment is Reasonable**

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

7 There are also other factors supporting the request that Plaintiff receive \$7,500. The
8 requested Service Award is also reasonable in light of the benefits Plaintiff has conferred upon the
9 entire Class, **resulting in payments averaging \$2,109.03 and highest payment of \$6,630.59.**

10 The requested award is appropriate and reasonable based upon Plaintiff's time and effort expended
11 on this case, the risks she faced, and the outcome of this case. Plaintiff has submitted a declaration
12 detailing the efforts and time she expended on behalf of the Class in order to advance this case to
13 its successful conclusion. There is no question that this case would not have reached the same
14 result but for Plaintiff's involvement and input at all stages of the litigation.

15 There are few individuals that are willing to act as a class representative and provide the
16 work, diligence, and willingness to assume a substantial financial risk should Defendant have
17 prevailed in this case. Plaintiff's willingness to assume the financial risk is significant. Plaintiff
18 risked a potential judgment taken against her for attorneys' fees and costs if this matter had not
19 been successfully concluded. Case law holds that a losing party is liable for the prevailing party's
20 costs, *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000), and in some wage and hour
21 actions, such as this case, pursuant to California Labor Code § 218.5, for attorneys' fees as well.
22 Though the fee agreement provides that Class Counsel would pay such costs, Plaintiff would
23 nevertheless have had a cost bill entered against her leaving her ultimately liable for potentially
24 hundreds of thousands of dollars in the unexpected possibility that Class Counsel did not meet
25 their obligation to cover those costs. Unfortunately, there have been several judgments entered
26 against class representatives, e.g. *Koehl v. Verio, Inc.* 142 Cal.App.4th 1313, 1328 (2006) (a wage
27 and hour class action where Defendant prevailed at trial, the named plaintiffs were held liable,
28 jointly and severally for the Defendant's attorneys' fees); *Whiteway v. Fedex Kinkos Office & Print*

1 *Services, Inc.*, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. 2007) (a wage and hour misclassification
2 case lost on summary judgment, after the case was certified, the named Plaintiff was assessed costs
3 in the sum of \$56,788.). The risk of payment of Defendant's costs, in itself alone, is a sufficient
4 basis for an award of the requested enhancement. Few are willing to take this risk, and it is clear
5 that Plaintiff, here, championed a cause on behalf of others with potentially huge consequences.

6 Courts routinely approve service payments, or incentive awards, to compensate named
7 plaintiffs for the services they provide and the risks they incur during class litigation. See *In re*
8 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers*
9 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
10 representatives); Manual § 21.62 n.971 (noting that service payments are warranted); *Cook v.*
11 *Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y.
12 1997) ("present or past employee whose present position or employment credentials or
13 recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his
14 or her name and efforts to the prosecution of litigation at some personal peril, a substantial
15 enhancement award is justified"); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th
16 Cir. 1974) ("We also think there is something to be said for rewarding those drivers who protect
17 and help to bring rights to a group of employees who have been the victims of discrimination.").

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

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

5 **d. The Administration Costs are Reasonable**

6 The Court-approved Settlement Administrator was responsible for formatting, printing and
7 mailing the Class Notices. The Settlement Administrator was responsible for responding to Class
8 Member inquiries, providing weekly status reports, answering questions from Counsel for the
9 Parties, and providing a declaration to document its duties and responsibilities under the
10 settlement. Plaintiff now requests that the Court finally approve the Settlement Administration
11 Costs in the amount of \$8,850 to Apex for services rendered and to be rendered for the notice and
12 settlement administration process.

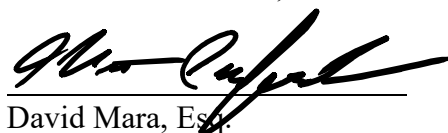
13 Following the grant of final approval, the Settlement Administrator's duties will continue
14 in order to calculate and mail the individual settlement payments to Participating Class Members,
15 perform tax reporting obligations, disburse other payments as ordered by the Court, and perform
16 such other duties as set forth in the Agreement. Administration Costs in the amount of \$8,850 to
17 Apex for services rendered and to be rendered is fair and reasonable and should be granted.

18 **V. CONCLUSION**

19 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
20 of the settlement, and award Class Counsel attorneys' fees in the sum of \$116,666.66 and litigation
21 expenses of \$15,606.90, Class Representative Enhancement Payment in the sum of \$7,500 to
22 Plaintiff, Administration Costs in the amount of \$8,850 to Apex, and a payment to the LWDA in
23 the amount of \$15,000 (which is 75% of \$20,000 allocated to Plaintiff's claims under PAGA).

24 Dated: May 13, 2024

MARA LAW FIRM, PC

25 
26 David Mara, Esq.

Matthew Crawford, Esq.

27 Attorneys for Plaintiff GABRIELA GUEVARA on
28 behalf of herself, all others similarly situated, and on
behalf of the general public