

JAMES HAWKINS APLC

James R. Hawkins, Esq. (#192925)

Christina Lucio, Esq. (#253677)

Mitchell J. Murray, Esq. (#285691)

9880 Research Drive, Suite 200

Irvine, CA 92618

Tel.: (949) 387-7200

Fax: (949) 387-6676

Email: James@jameshawkinsaplc.com

Email: Christina@jameshawkinsaplc.com

Email: Mitchell@jameshawkinsaplc.com

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

2255 Calle Clara La Jolla, CA 92037

Telephone: (858) 551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Email: Kyle@bamlawca.com

Attorneys for Plaintiffs

[Additional Counsel on the Following Page]

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

Coordination Proceeding Special Title (Rule
3.550)

TARGET WAGE AND HOUR CASES

Included Actions:

Medina et al. v. Target Corporation

San Bernardino Superior Court, Case No.
CIVSB2209126

Torres v. Target Corporation

Sacramento Superior Court, Case No. 34-2022-
00319715

Judicial Council Coordination Proceeding Case
No.: JCCP 5259

Assigned for All Purposes To:
Hon. Wilfred J. Schneider, Jr.
Dept.: S-32

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND AWARD
OF ATTORNEYS' FEES, COSTS,
SERVICE AWARDS AND
ADMINISTRATION COSTS; and
MEMORANDUM OF POINTS AND
AUTHORITIES**

Hearing Date: December 5, 2024

Hearing Time: 8:30 a.m.

*[Hearing set by Orders dated July 22, 2024
and August 7, 2024]*

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)

phaines@haineslawgroup.com

Fletcher W. Schmidt (SBN 286462)

fschmidt@haineslawgroup.com

Matthew K. Moen (SBN 305956)

mmoen@haineslawgroup.com

Susan J. Perez (SBN 329044)

sperez@haineslawgroup.com

2155 Campus Drive, Suite 180

El Segundo, California 90245

Telephone: (424) 292-2350

Facsimile: (424) 292-2355

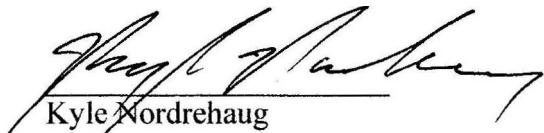
Attorneys for Plaintiffs

1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**
2 **NOTICE IS HEREBY GIVEN** that on December 5, 2024 at 8:30 a.m. or as soon thereafter as the
3 matter may be heard in Department S-32 of the above captioned Court, before the Honorable
4 Wilfred J. Schneider, Plaintiffs Gustavo Medina, Janira Perez, Sergio Garcia, Alicia Torres, Zachary
5 Lomely, Angel Carter, Denise Cardenas, Brian Mena, Jimmy Perez, Emily Porcho, Sheemal
6 Narayan, Juan Morales, Joaldi Gonzalez, and Martha Franco (together “Plaintiffs”), by and through
7 Plaintiffs’ counsels of record, will and hereby do move the Court for Final Approval of the
8 Stipulation Regarding Class and Private Attorneys General Act Settlement and Release (hereinafter
9 “Settlement Agreement”), awarding attorneys’ fees, costs, and Service Awards to the Plaintiffs, and
10 entering final approval and judgment.

11 This Motion is made pursuant to Rule 3.769 of the California Rules of Court and former
12 Labor Code section 2699(l).¹ This Motion is based on this Notice of Motion and Motion, the
13 attached Memorandum of Points and Authorities, the accompanying Declarations of James R.
14 Hawkins, Kyle Nordrehaug, Paul K. Haines, Madely Nava of Apex Class Action LLC, the
15 declarations of the Plaintiffs, the Settlement Agreement, argument of counsel, all papers and
16 pleadings filed in the action, and upon any further information or evidence requested by the Court
17 at the time of hearing on this Motion.

18
19 Dated: November 8, 2024

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

20
21 By: 
22 Kyle Nordrehaug

23 Attorney for Plaintiffs and Class Counsel
24
25
26

27 ¹ This motion is brought under the former Labor Code sections applicable to PAGA because the
28 Action was filed before June 19, 2024, so the new amended PAGA sections do not apply to this
Action.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court preliminary approved the class settlement by Order dated July 22, 2024. Plaintiffs Gustavo Medina, Janira Perez, Sergio Garcia, Alicia Torres, Zachary Lomely, Angel Carter, Denise Cardenas, Brian Mena, Jimmy Perez, Emily Porcho, Sheemal Narayan, Juan Morales, Joaldi Gonzalez, and Martha Franco (together “Plaintiffs”), now respectfully request that this Court grant final approval of the Stipulation Regarding Class and Private Attorneys General Act Settlement and Release (hereinafter “Settlement Agreement”) attached to the Declaration of Kyle Nordrehaug (“Nordrehaug Decl.”) as **Exhibit 1**, which seeks to resolve claims against Target Corporation (“Defendant”) (collectively with Plaintiffs, the “Parties”) in exchange for a non-reversionary Gross Settlement Amount of Six Million Four Hundred Fifty Thousand Dollars and Zero Cents (\$6,450,000.00). The Class Members overwhelmingly supported the Settlement, as there is a 99.96% participation rate, with zero objections. The proposed Settlement is projected to pay an estimated average gross payment \$159.95 per Class Member, with the highest estimated gross payment at \$611.78. (Administrator Decl. of Madely Nava [hereinafter “Nava Decl.”], ¶ 14).

Plaintiffs also move for the following additional relief. First, Plaintiffs move for final approval of Class Counsel Fees Award in the amount of \$2,128,500 which is 33% of the Gross Settlement Amount. As will be demonstrated herein, Class Counsel’s attorney fee request is supported using the percentage fee method and the lodestar method. Second, Plaintiffs move for final approval of payment of the litigation costs in the amount of \$46,582.91, all of which was incurred in litigating this Action. Third, Plaintiffs move for final approval of the Service Award payments to Plaintiffs in the sum of \$10,000 each, as Service Awards to compensate for their service as Class Representatives and providing a Complete and General Release of their claims against Defendant – a release significantly greater than the Class Members provided – and for the risks absorbed and time spent litigating the Action. Plaintiffs played a vital role in representing Class Members in this Action and spearheading the lawsuit to seek monetary relief on behalf of all Class Members. Fourth, Plaintiffs move for final approval of the payment of \$85,000 for Settlement Administration Costs to Apex Class Action LLC. Fifth, Plaintiffs move for final approval of the

1 \$129,000 PAGA Distribution Amount and the payment to the Labor and Work Development
2 Agency (“LWDA”) for its share of the PAGA Distribution Amount (\$96,750.00), with the
3 remaining \$32,250.00 distributed to the PAGA Affected Employees.

4 This case required many hours of attorney time from Class Counsel and sought relief on
5 behalf of 24,525 Class Members within the State of California: All individuals employed by Defendant
6 at one or more Target distribution centers in the State of California in non-exempt positions at any time during
7 the Class Period of March 21, 2019 through and including December 10, 2023.² (Settlement at ¶¶ 1.2 and
8 1.8.)

9 This litigation involved the review and analysis of documents, policies, and practices, as
10 well as a full day of mediation. Most importantly, the Settlement and all its terms received
11 overwhelming support from Class Members, as there were no objections and only eleven (11)
12 Requests for Exclusion. Therefore, Plaintiffs respectfully request the Court grant final approval of
13 the Settlement, Class Counsel Fees Award and Class Counsel Costs Award, Service Awards,
14 Settlement Administration Costs, and the PAGA Distribution Amount in the amounts preliminarily
15 approved by the Court and as fully disclosed to Class Members.

16 **II. BACKGROUND, INVESTIGATION, DISCOVERY**

17 On February 23, 2022, Plaintiff Gustavo Medina filed a class action complaint in San
18 Bernardino County Superior Court, Case No. CIVSB2204117, alleging the following causes of
19 action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Owed; (3) Failure to
20 Provide Meal Periods; (4) Failure to Authorize or Permit Rest Periods; (5) Failure to Timely Pay
21 Wages Owed Upon Separation from Employment; (6) Knowing and Intentional Failure to Comply
22 with Itemized Wage Statement Provisions; and (7) Violation of California Business and Professions
23 Code §§17200, et seq. (the “Medina Class Action”). (Nordrehaug Decl. ¶ 6.) Plaintiff Medina
24

25 ² At the time Plaintiffs filed their motion for preliminary approval, the Parties believed there were
26 24,525 individuals in the putative class. However, through the notice process, the Parties discovered
27 there are an additional 156 individuals who should have received the Notice of the Settlement but
28 did not. The Parties will be separately filing a motion for preliminary approval of a settlement as to
those 156 individuals (the “Separate Settlement Agreement”). However, the Parties agree that the
Separate Settlement Agreement should not delay administration of the original Settlement.

1 served both the LWDA and Defendant with notice of his claims on February 22, 2022. The Medina
2 Class Action was removed to the United States District Court for the Central District of California
3 on May 11, 2022, as Central District, Case No. 5:22-cv-00805-JVS-SP. (*Id.*) On May 2, 2022, as a
4 proxy for the State of California, Plaintiff Medina filed a PAGA representative action as San
5 Bernadino County Superior Court, Case No. CIVSB2209126 which sought PAGA penalties for
6 Labor Code violations. (*Id.*)

7 On March 17, 2022, Plaintiff Alicia Torres filed a related class action complaint in
8 Sacramento County Superior Court entitled Torres v. Target Corporation, Case No. 34-2022-
9 00316991 (“the Torres Class Action”). Torres was removed to the United States District Court for
10 the Eastern District, Case No. 2:22-at-00604, on June 10, 2022. (Nordrehaug Decl. ¶ 6.) On May
11 11, 2022, Plaintiff Torres filed an action against Defendant in the Sacramento County Superior
12 Court seeking civil penalties pursuant to PAGA for alleged Labor Code violations. On September
13 28, 2022, Plaintiff Angel Carter filed a lawsuit against Defendant in the San Bernardino County
14 Superior Court, Case No. CIVSB2221510, alleging class action claims. On September 30, 2022,
15 Plaintiff Zachary Lomely filed a lawsuit against Defendant alleging class action claims in the Kern
16 County Superior Court, Case No. BCV-22-102580. On January 5, 2023, Plaintiff Joaldi Gonzalez
17 filed a separate action against Defendant in the Kern County Superior Court, Case No. BCV-23-
18 100057. (*Id.*)

19 In connection with the Settlement, the Parties filed a stipulation for leave for the filing of a
20 Second Amended Consolidated Class Action and PAGA Complaint (“Operative Complaint”) which
21 effectively consolidates the consolidated class action lawsuit currently pending in the United States
22 District Court for the Central District of California entitled *Gustavo Medina, et al. v. Target*
23 *Corporation*, Case No. 5:22-cv-00805-JGB (SHKx) (the “Class Action”) with the coordinated
24 California Private Attorneys General Act lawsuits currently pending in the San Bernardino County
25 Superior Court entitled Target Wage and Hour Cases, Judicial Council Coordination Proceeding
26 No. 5259 (the “PAGA Action”) and which asserts all claims which have been investigated and
27 released through the Settlement. (Nordrehaug Decl. ¶ 7.)
28

1 Class Counsel conducted a thorough investigation into the factual and legal issues implicated
2 by Plaintiffs' claims and were able to objectively assess the Settlement's reasonableness. Class
3 Counsel conducted a diligent investigation in litigation and in preparing for mediation by: (1)
4 conducting extensive informal and formal discovery, including a Rule 26(f) conference and initial
5 disclosures; (2) reviewing and analyzing thousands of timekeeping and payroll records, Defendant's
6 employee handbooks, Plaintiffs' offer letters, certain pay stubs, forms and acknowledgments,
7 memoranda, Plaintiffs' personnel files, training materials, schedules, roster data, and relevant
8 policies and procedures; (3) reviewing class size data and cross checking data points; (4) researching
9 the applicable law and potential defenses; (5) interviewing Class Members regarding their
10 experience and the claims asserted; (6) conferences between counsel regarding the claims and
11 defenses; and (7) analyzing and calculating Defendant's potential liability with the assistance of an
12 expert. As such, Class Counsel received the data and information for the Class, which was sufficient
13 for Plaintiffs' expert to prepare the valuations of the claims for the Class. The document and data
14 exchanges allowed Class Counsel to fully assess the nature and magnitude of the claims being
15 settled, as well as the impediments to recovery, and ultimately enabled Class Counsel to make an
16 independent assessment of the reasonableness of the Settlement's terms. (Nordrehaug Decl. ¶ 8.)

17 The Parties attended an arms-length mediation session with Gig Kyriacou, a respected and
18 experienced mediator of wage and hour class actions, in order to reach this Settlement. In
19 preparation for the mediation, Defendant provided Class Counsel with necessary information for
20 the members of the Class, including time data, payroll data and data concerning the composition of
21 the Class. Plaintiffs analyzed the data with the assistance of damages expert, Berger Consulting,
22 and prepared and submitted a mediation brief and damage valuation to the Mediator. While the
23 Parties were unable to reach a resolution at mediation, the Parties ultimately negotiated a complete
24 settlement of Plaintiffs' claims with Mr. Kyriacou's guidance. (Nordrehaug Decl. ¶ 9.)

25 The Class Representatives have vigorously prosecuted this case, and Defendant has vigorously
26 contested it. (Nordrehaug Decl. ¶ 9.) The Parties engaged in sufficient investigation and informal
27 discovery to assess the relative merits of the claims of the Class and of Defendant's defenses to
28

1 them. (*Id.*) Defendant has denied all of Plaintiffs’ allegations in their entirety and any liability or
2 wrongdoing of any kind. (*Id.*)

3 **A. The Settlement Provides Reasonable Compensation to Class Members**

4 As a result of the mediation, the Parties agreed to settle this matter for a Gross Settlement
5 Amount of \$6,450,000 (Nordrehaug Decl., Ex. 1-Settlement Agreement at ¶ 1.17.) Based on their
6 own respective independent investigations and evaluations, and after taking into account the sharply
7 disputed factual and legal issues involved in this matter, the risks attending further prosecution of
8 the case, and the monetary benefits received under the Settlement, Class Counsel is of the opinion
9 that Settlement for the consideration and on the terms set forth in the Settlement Agreement is fair,
10 reasonable and adequate and is in the best interests of the Class Members. (Nordrehaug Decl. ¶ 10;
11 Declaration of James Hawkins, ¶ 4; Declaration of Paul K. Haines, ¶ 17.)

12 Even without the presumption of fairness and reasonableness, the Settlement clearly is
13 within the range of reasonableness as thoroughly discussed in detail in the motion for preliminary
14 approval, and as considered by the Court in granting preliminary approval.

15 As explained at preliminary approval, accounting for the risks of continued litigation and
16 impediments to discovery, Plaintiffs determined that a settlement amounting to \$6,450,000 was fair and
17 reasonable, and accounts for an approximate 23% of total possible recovery, and courts have routinely
18 approved settlements that provided a similar discounted range of the maximum potential recovery.
19 (Nordrehaug Decl. ¶¶ 11-21.) *See, e.g., Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945,
20 at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell]
21 within the range of possible initial approval based on the strength of plaintiff’s case and the risk and expense
22 of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008)
23 (approving settlement of 6% to 8% of estimated damages).³

24
25 ³ *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23-
26 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross
27 settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less
28 of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist.
LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action
settlement representing “8.1% of the full verdict value” with net settlement amount representing
(continued . . .)

III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS' RESPONSE

A. Terms of the Settlement

The Gross Settlement Amount is Six Million Four Hundred Fifty Thousand Dollars (\$6,450,000). (Settlement at ¶ 1.17). Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) \$2,128,500 in Class Counsel Fees Award (i.e., 33% of the common fund) and up to \$80,000 in Class Counsel Costs Award; (2) Settlement Administration Costs of \$85,000; (3) a \$129,000 PAGA Distribution Amount (payment to the LWDA of \$96,750 and a \$32,250.00 payment to PAGA Affected Employees); and (4) Class Representative Service Awards of \$10,000.00 to each Plaintiff, for their service on behalf of the Class, the risks they took in bringing their representative claims, and for the Complete and General Release provided to the Released Parties; and (5) automatic payments to all Participating Class Members—meaning, all Class Members except those who submit valid Requests for Exclusion—from the Net Settlement Amount. (Settlement at ¶ 1.18, 1.25, 1.26, 1.35.)

The Gross Settlement Amount does not include Defendant's employer side taxes. (Settlement at ¶ 3.5.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Settlement at ¶ 1.18.)

B. Released Claims

In exchange for the Gross Settlement Amount, Plaintiffs and Participating Class Members will agree to release the Released Claims during the Settlement Period. "Released Class Claims" means the claims released by Participating Class Members, and include:

any and all claims, rights, demands, and liabilities of every nature and description, whether known or unknown, suspected or unsuspected, arising under federal, state,

approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys' fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where "[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney's fees and costs.").

1 or local law, that were asserted or that could have been asserted based on the facts
2 alleged in the Second Amended Consolidated Class Action and PAGA Complaint,
3 that arose during the Class Period, including but not limited to: unfair competition in
4 violation of California Business & Professions Code section 17200, et seq.; failure to
5 pay for all hours worked including due to rounding of time punches, off-the-clock
6 work, time spent in security screenings (including but not limited to bag and other
7 security checks), time spent in COVID screenings not limited to temperature checks
8 and symptom questionnaires), controlled walking time, and/or controlled meal and
9 rest periods; failure to pay minimum wages in violation of California Labor Code
10 sections 1194, 1197, and 1197.1 including due to rounding of time punches, off-the-
11 clock work, time spent in security screenings (including but not limited to bag and
12 other security checks), time spent in COVID screenings (including but not limited to
13 temperature checks and symptom questionnaires), controlled walking time, and/or
14 controlled meal and rest periods; failure to accurately pay all wages based on the
15 regular rate of pay by failing to include incentive pay based on employee performance
16 in the regular rate calculation; failure to pay overtime wages in violation of California
17 Labor Code section 510 and the applicable IWC Wage Order including due to
18 rounding of time punches, off-the-clock work, time spent in security screenings
19 including but not limited to bag and other security checks), time spent in COVID
20 screenings (including but not limited to temperature checks and symptom
21 questionnaires), controlled walking time, controlled meal and rest periods, and failure
22 to accurately calculate the regular rate of pay; failure to provide meal periods and to
23 pay meal period premiums at the correct regular rate of pay in violation of California
24 Labor Code section 512 and the applicable IWC Wage Order, including missed, late,
25 short, controlled, and/or interrupted meal periods; failure to provide rest periods and
26 to pay rest period premiums at the correct regular rate of pay in violation of California
27 Labor Code section 226.7 and the applicable IWC Wage Order, including missed,
28 late, short, controlled, and/or interrupted rest periods; failure to pay sick pay wages
at the correct regular rate of pay in violation of California Labor Code sections 201-
204, 223, and 246; failure to pay reporting time pay wages when due or at the correct
regular rate of pay; unlawful deductions from wages in violation of in violation of
California Labor Code section 221; failure to provide accurate wage statements in
violation of California Labor Code section 226; failure to reimburse business
expenses in violation of California Labor Code section 2802; failure to pay wages
when due in violation of California Labor Code sections 201-204; attorneys' fees and
costs incurred to prosecute the Action on behalf of Class Members; and any other
derivative remedies, penalties, and interest available under the law based on the facts
alleged in the Second Amended Consolidated Class Action and PAGA Complaint.
The release of Class Claims will run through the Class Period. Except as set forth in
the Settlement, this Agreement, the Class Members who do not opt out of the
Settlement do not release any other claims, including claims for vested benefits,
wrongful termination, violation of the Fair Employment and Housing Act,
unemployment insurance, disability, social security, workers' compensation, or
claims based on facts occurring outside the Class Period.

(Ex. 1, Settlement, ¶¶ 1.3, 1.8, 3.5.2.)

1 **C. The Class Members Support the Settlement – Zero (0) Objections and Only**
2 **Eleven (11) Opt-Outs**

3 By order dated June 22, 2024, the Court granted Preliminary Approval of the Settlement,
4 conditionally certified the Class for settlement purposes, appointed Apex Class Action LLC to act
5 as the Settlement Administrator, approved the Notice to be sent to the Class, and directed that the
6 Notice be mailed to the Class via U.S. First Class Mail. On August 30, 2024, Apex mailed the
7 Notices to 24,525 Class Members. (Nava Decl. ¶ 7.) Out of the 24,525 Notices, only 414 were
8 deemed undeliverable after attempts to ascertain the addresses. (Nava Decl. ¶¶ 8-9.) Apex received
9 only eleven (11) Requests for Exclusion. (Nava Decl. ¶ 10.) As a result of the mailing, there is a
10 99.96% participation rate and 24,514 Participating Class Members will be mailed a settlement
11 check. (*Id.* ¶ 12.)

12 Checks issued to Participating Class Members or PAGA Affected Employees will remain
13 valid and negotiable for 180 days from their date of issuance. The checks will become void on the
14 181st day after mailing. (Ex. 1, Settlement, ¶ 3.7.8-3.7.9.) Any amounts attributable to checks that
15 remain uncashed after the Void Date shall be transmitted within fourteen days of the Void Date to
16 a *cy pres* charity, Legal Aid at Work. (Ex. 1, Settlement, ¶ 3.7.9.)

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

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

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

25 In deciding whether to approve a class settlement, a court evaluates whether the proposed
26 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794,
27 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. Of S.F.* (9th Cir. 1982) 688
28 F.2d 615, 625). 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 arms-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.” *Id.* at 1802; *accord Wershba*, 91 Cal. App. 4th at 245. In addition, a court should consider additional relevant factors, including the strength of the plaintiffs’ 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.

At the time of preliminary approval, the Court was provided with sufficient information to satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown until after the Class had an opportunity to respond to the Settlement as explained in the Notice. Subject only to the Class’s reaction to the Settlement, the Court preliminarily presumed the Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and adequate time provided to the Class to object to the Settlement, no Class Member submitted an objection and only eleven (11) Class Members opted out of the Settlement, ***resulting in a 99.96% participation rate from the Class.*** (Nava Decl. ¶ 12.) Thus, the proposed Settlement is entitled to the presumption that it is fair, adequate, reasonable and in all other respects proper and should be finally approved.

V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS

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

Class Counsel applies for an award of attorneys’ fees in the sum of \$2,128,500.00 of the Gross Settlement Amount, and litigation costs of \$46,582.91. (Nordrehaug Decl. ¶¶ 22-27; Hawkins Decl., ¶¶ 22-23, Haines Decl., ¶ 20.) When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method survives in California class action cases.” 1 Cal.5th 480, 506 (2016), in stating:

The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it

provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Id. at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).⁴

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 common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.” The reasons for applying the common fund 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

⁴ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . . they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee”).

he will be properly and directly compensated should his efforts be successful.” *Id.* Because there is a defined and clearly traceable benefit to the Class, the Court can base an award of attorneys’ fees using a ‘common fund’ approach to compensate Class Counsel.

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

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

The requested fee of 33% of the Gross Settlement Amount falls in the mid-range of percentage class fee awards, which generally range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates Class Counsel for their efforts, as well as the result achieved for the benefit of the Class. Numerous courts in California routinely approve fee requests equal to or greater than 33% of the common fund. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Rippee v. Boston Mkt. Corp.*, 2006 U.S. Dist. LEXIS 101136, at *12 (S.D. Cal. 2006) (awarding a 40% fee on a \$3.75 million wage and hour class action settlement). Such similar awards by other Courts are set forth in the Nordrehaug Decl. at ¶ 26.

Additionally, Class Counsel have executed a joint prosecution agreement and agreed to split the requested fees on a 51/34/15 basis. (Nordrehaug Decl. ¶ 22.) In short, Class Counsels’ fee request of \$2,128,500 (33% of the common fund) is in line with awards in similar cases in California and demonstrates that Class Counsels’ fee request is consistent with market rates and is reasonable.

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

Class Counsels’ 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*, 20 Cal. 3d at 48. The court then may enhance 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*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001), “[t]here is no...rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar”].

As of the date of filing, the Class Counsel Fees Award is currently equivalent to the current lodestar of \$858,112.50 with a reasonable multiplier of less than 2.5 and is therefore reasonable under *Laffitte*. All of the work and tasks performed by Class Counsel were reasonable and necessary to the prosecution of this case. (Nordrehaug Decl. ¶ 24; Hawkins Decl. ¶¶ 22-23; Haines Decl. ¶ 20.)

3. Class Counsel’s Hourly Rates are Reasonable

Class Counsels’ hourly rates are between \$250 and \$1050 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, San Bernardino and San Diego County Superior Courts. (Nordrehaug Decl. ¶ 25; Hawkins Decl. ¶ 23; Haines Decl. ¶ 18.) *See also Children’s Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates were reasonable where they were “within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work”).

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095. When determining a reasonable hourly rate, courts may consider factors such as skill and experience, the nature of the work performed, the relevant area of expertise and the attorney’s customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632. Class Counsels’ skill and experience support their hourly rates. Their practices are limited exclusively to litigation, focusing on the representation of employees in wage and hour and consumer class action matters. (Nordrehaug Decl. ¶¶ 3-5; Hawkins Decl., ¶¶ 6-11; Haines Decl., ¶¶ 2-12.) As prominent attorneys in the field of wage and hour class action litigation, Class Counsel continually monitor the prevailing market rates charged by both defense and plaintiff law firms and set the billing rates of their attorneys and paralegals to be consistent with the prevailing market rates

1 in the private sector for attorneys and staff of comparable skill, qualifications and experience. Other
2 wage and hour attorneys working as class counsel before California courts charge comparable if not
3 higher rates. Therefore, as they are in line with those of the relevant community, Class Counsels’
4 hourly rates are reasonable.

5 **4. Class Counsel’s Total Hours are Reasonable**

6 In determining a lodestar fee, reasonable hours include, in addition to time spent during
7 litigation, the time spent before the action was filed, including time spent interviewing clients,
8 investigating the facts and the law, and preparing the initial pleadings. *See New York Gaslight Club,*
9 *Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to establish and
10 defend the attorneys’ fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

11 The work performed to achieve a settlement that will provide valuable consideration to the
12 Class, is summarized by Class Counsel in the declarations submitted herewith. (Nordrehaug Decl.
13 ¶¶ 24 and Exhibits #3 and #4 [lodestar of \$340,170]; Hawkins Decl., ¶¶ 22-23 [lodestar of
14 \$340,007.50], Haines Decl., ¶ 20 [lodestar of \$177,935]); *Syers Props. III, Inc. v. Rankin*, 226
15 Cal.App.4th 691, 699 (2014) (“Because time records are not required under California law ... , there
16 is no required level of detail that counsel must achieve.”) (internal quotations omitted). All tasks
17 and work performed were reasonable and necessary to the prosecution of this Action. The work
18 performed was justified in light of the result achieved.

19 **5. Costs of Litigation are Reasonable**

20 Class Counsel seeks reimbursement of the litigation costs and expenses of \$46,582.91. The
21 requested award is the amount of the actual costs incurred. These costs were reasonable and
22 necessary to prosecute this case and the results achieved and are fair, and reasonable. (Nordrehaug
23 Decl. ¶ 27, Ex.3 and 4 [costs of \$19,443.63]; Hawkins Decl., ¶ 26 [costs of \$24,886.93], Haines
24 Decl., ¶ 19 [costs of \$2,252.35].)

25 **VI. THE CLASS REPRESENTATIVE SERVICE AWARDS ARE REASONABLE**

26 Class Counsel seek approval of \$10,000 Service Awards to each of the named
27 Plaintiffs/Class Representatives. The requested enhancement awards are reasonable in light of the
28 general releases of all claims Plaintiffs agreed to, greater than the release given by Participating

1 Class Members, the benefits Plaintiffs conferred upon the entire Class resulting in payments to all
2 Participating Class Members, the time spent assisting counsel with the investigation and prosecution
3 of these claims, commitment to responding to discovery and depositions, and consenting to the
4 proposed Settlement. Furthermore, in pursuing this Action on behalf of the Class, Plaintiffs risked
5 a judgment for attorneys' fees and costs in the event this matter had been lost. (Nordrehaug Decl. ¶
6 28.)

7 Courts routinely approve service payments, or incentive awards, to compensate named
8 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
9 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers*
10 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
11 representatives); *Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11
12 (C.D. Cal. 2022) (service awards of \$15,000 each are appropriate); *Mathein v. Pier 1 Imps. (U.S.)*,
13 *Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500). Based on the foregoing,
14 the total of \$140,000.00 Service Awards with \$10,000.00 to each Named Plaintiff continues to be
15 fair, appropriate, and justified as part of the overall Settlement.

16 **VII. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE**

17 The Parties agreed to hire Apex Class Action LLC as the Settlement Administrator, and the
18 Court approved this choice. The Settlement Administrator was responsible for formatting, printing
19 and mailing the Notice. It was also responsible for updating addresses and re-mailing Notices
20 returned as undeliverable, responding to Class Member inquiries, answering questions from Counsel
21 for the Parties, and providing a declaration to document its duties and responsibilities under the
22 Settlement. Plaintiffs now request that the Court approve the \$85,000 fee to Apex Class Action LLC
23 for services rendered and to be rendered. (Nava Decl. ¶ 17.) Following the granting of final approval,
24 the Settlement Administrator's duties will continue in order to calculate and mail Class Member
25 Payment checks to Participating Class Members, perform tax reporting obligations, disburse other
26 payments as ordered by the Court, and perform such other duties as set forth in the Settlement
27 Agreement. The fee of \$85,000 for services rendered and to be rendered is fair and reasonable and
28 should be granted.

1 **VIII. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE**

2 The PAGA Distribution Amount of \$129,000.00 to resolve the applicable penalties claimed
3 under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), is reasonable
4 under the circumstances. The Parties negotiated a good faith amount to be allocated to the LWDA
5 and the PAGA Affected Employees. The sum to be paid was not the result of self-interest at the
6 expense of other Class Members. The LWDA was provided notice of the Settlement concurrently
7 with the filing of the preliminary approval motion and the instant motion. Plaintiffs did not receive
8 a response or objection to the Settlement from the LWDA. Nordrehaug Decl. ¶ 29 Thus, Plaintiffs
9 request the Court finally approve the sum of \$129,000 for the PAGA Distribution Amount.

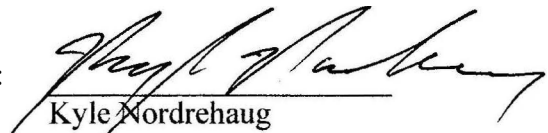
10 **IX. CONCLUSION**

11 Based on the foregoing, Class Counsel respectfully request the Court grant final approval of
12 the Settlement and award (1) the Class Counsel Fees Award in the sum of \$2,128,500.00 and
13 litigation costs of \$46,582.91; (2) award the named Plaintiffs the Service Award payments in the
14 sum of \$10,000 each; (3) award \$85,000 to Apex Class Action, LLC, for settlement administration
15 services, and (4) approve the PAGA Distribution Amount of \$129,000 with a payment to the LWDA
16 in the amount of \$96,750.00 and payment to PAGA Affected Employees in the amount of
17 \$32,250.00.

18
19 Dated: November 8, 2024

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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21 By:


Kyle Nordrehaug

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23 Attorney for Plaintiffs and Class Counsel
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