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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANGEL RODRIGUEZ, individually, and on behalf of other members of the general public similarly situated, Plaintiff, vs. AMERICAN TEXTILE MAINTENANCE, a California corporation; and DOES 1 through 25, inclusive, Defendants. ______________________________ LUCIO MENJIVAR, on behalf of himself and all other aggrieved employees, PLAINTIFF, vs. AMERICAN TEXTILE MAINTENANCE COMPANY, a California corporation d/b/a REUPUBLIC MASTER CHEFS TEXTILE RENTAL SERVICES, and DOES 1 through 10, inclusive, DEFENDANTS.	Case No.: 22STCV17855 (Lead) (*Consolidated with Case No. 22STCV10611*) Honorable Elaine Lu Department 9 **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, ATTORNEYS' FEES AND COSTS, ENHANCEMENT PAYMENTS, AND SETTLEMENT ADMINISTRATION COSTS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: March 25, 2025 Time: 10:00 a.m. Dept.: 9 *Menjivar* Action Filed: March 28, 2022 *Rodriguez* Action Filed: May 31, 2022 *Rodriguez* FAC Filed: August 4, 2022 Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **March 25, 2025 at 10:00 a.m.** in Department 9 of the above-captioned Court located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, pursuant to California Code of Civil Procedure section 382, Rule 3.769 of the California Rules of Court, and California Labor Code section 2699(l), Plaintiffs Angel Rodriguez and Lucio Menjivar (together, "Plaintiffs") will and hereby do move the Court for an Order granting final approval of the proposed class action and Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq*. ("PAGA") settlement between Plaintiffs and Defendant American Textile Maintenance Company doing business as Republic Master Chefs ("Defendant").

Plaintiffs request that the Court enter an Order:

1. Granting final approval of the class action and PAGA settlement;

2. Approving the settlement as fair, adequate, and reasonable, based upon the terms as set forth in the Court-approved First Amended Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement" or "Settlement"), including payment by Defendant of the Gross Settlement Amount of One Million One Hundred Seventy-Five Thousand Dollars and Zero Cents ($1,175,000.00) equal to the amounts to pay (1) the Settlement Class Members and PAGA Members pursuant to the terms of the Settlement; (2) the Court-approved Attorneys' Fees and Costs; (3) the Court-approved Enhancement Payments; (4) the Court-approved Settlement Administration Costs; and (5) the Court-approved payment to the California Labor and Workforce Development Agency ("LWDA") pursuant to PAGA;

3. Approving Class Counsel's request for one-third (1/3) of the Gross Settlement Amount, i.e., Three Hundred Ninety-One Thousand Six Hundred Sixty-Six Dollars and Zero Cents ($391,666.66) in attorneys' fees, plus reimbursement of actual costs and expenses in the amount of Twenty-Four Thousand One Hundred Ninety-One Dollars and Twenty-Two Cents ($24,191.22);

4. Approving the Enhancement Payments to Plaintiffs in the aggregate amount of Fifteen Thousand Dollars and Zero Cents ($15,000.00);

5. Approving the Settlement Administration Costs to Apex Class Action LLC in the amount of Seventeen Thousand Five Hundred Dollars and Zero Cents ($17,500.00); and

8. Approving Thirty-Seven Thousand Five Hundred Dollars and Zero Cents ($37,500.00) to be paid to the LWDA as seventy-five percent (75%) of the Fifty Thousand Dollars and Zero Cents ($50,000.00) allocated to civil penalties under PAGA.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This Motion is based on the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Class Counsel (Jonathan M. Genish and Rana Nader), the Plaintiffs (Angel Rodriguez and Lucio Menjivar), and the Settlement Administrator (Madely Nava on behalf of Apex Class Action LLC), the pleadings and other records on file with the Court in this matter, and such evidence or oral argument as may be presented at the hearing on this Motion.

Respectfully submitted,

Dated: February 25, 2025

BLACKSTONE LAW, APC

By: ______________________
Jonathan M. Genish

Attorneys for Plaintiff Angel Rodriguez and the Class

Dated: February 25, 2025

PROXY LAW FIRM LLP

By: /s/ Rana Nader
Rana Nader

Attorneys for Plaintiff Lucio Menjivar and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Angel Rodriguez ("Plaintiff Rodriguez") and Lucio Menjivar ("Plaintiff Menjivar") (together, "Plaintiffs") seek final approval of the class action settlement reached with Defendant American Textile Maintenance Company doing business as Republic Master Chefs ("Defendant"). Subject to Court approval, Plaintiffs and Defendant (collectively, the "Parties") have settled the Released Class Claims and Released PAGA Claims as defined in the First Amended Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement" or "Settlement") for a total amount of One Million One Hundred Seventy-Five Thousand Dollars and Zero Cents ($1,175,000.00) ("Gross Settlement Amount"). (*See* Declaration of Jonathan M. Genish in Support of Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement, Attorneys' Fees and Costs, Enhancement Payments, and Settlement Administration Costs ["Genish Decl."], ¶ 24 & Exh. 2).

The Court conditionally certified, for settlement purposes only, the Class defined as: "All current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period" ("Class" or "Class Members"). (Settlement Agreement, ¶ 6.b; Genish Decl., ¶ 22). The "Class Period" is defined as the period from May 31, 2018 through June 23, 2024. (Settlement Agreement, ¶ 6.f; Genish Decl., ¶ 22). The "Settlement Class Members" consist of all Class Members who did not submit a timely and valid Request for Exclusion. (Settlement Agreement, ¶ 6.ll; Genish Decl., ¶ 22). The "PAGA Members" consist of "all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period." (Settlement Agreement, ¶ 6.x; Genish Decl., ¶ 22). The "PAGA Period" is defined as the period from January 18, 2021 through June 23, 2024. (Settlement Agreement, ¶ 6.z; Genish Decl., ¶ 22).

As discussed herein, the proposed Settlement satisfies all the criteria for final settlement approval under California law because it is fair, adequate, and reasonable. (Genish Decl., Exh. 2; *See also, Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 180 l). The response of the Class to the Settlement confirms that final settlement approval is appropriate. *There have been no objections to or opt-outs from* the

Class Settlement. (Declaration of Madely Nava of Apex Class Action, LLC Regarding Notice and Settlement Administration ["Nava Decl."], ¶¶ 10 & 11).

Because the Settlement achieves outstanding results for the Settlement Class Members, the PAGA Members, and the State of California, Plaintiffs respectfully request, on behalf of the Class and without opposition from Defendant, that the Court approve the Settlement as fair, adequate, and reasonable, and enter judgment in accordance with the Settlement's terms.

Plaintiffs seek the Court's approval of an attorneys' fee award of one-third (1/3) of the Gross Settlement Amount, equaling Three Hundred Ninety-One Thousand Six Hundred Sixty-Six Dollars and Zero Cents ($391,666.66), plus reimbursement of in actual litigation costs and expenses in the amount of Twenty-Four Thousand One Hundred Ninety-One Dollars and Twenty-Two Cents ($24,191.22) (together, "Attorneys' Fees and Costs"). Class Counsel's request for an award of attorneys' fees and costs is reasonable and appropriate in light of the outstanding work performed by Class Counsel in the matter, the contingent nature of this matter, and the results achieved under the Settlement. (*See Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19).

Plaintiffs also request the Court to confirm the amounts agreed to be paid to Plaintiffs in the amount of Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) each (total, $15,000.00) ("Enhancement Payments") for their services on behalf of the Class and PAGA Members. These amounts proposed to be awarded to Plaintiffs are fair and reasonable for the reasons Plaintiffs provided in their declaration. (*See* Declaration of Plaintiff Angel Rodriguez in Support of Motion for Final Approval of Class Action and PAGA Settlement, Attorneys' Fees and Costs, Enhancement Payments, and Settlement Administration Costs ["Rodriguez Decl."] and Declaration of Plaintiff Lucio Menjivar in Support of Notice of Motion and Motion for Final Approval of Class Action and PAGA Settlement, Attorneys' Fees and Costs, Enhancement Payments, and Settlement Administration Costs ["Menjivar Decl."] filed concurrently herewith). Courts approve incentive awards to plaintiffs when justified and appropriate to compensate plaintiffs for their time, effort, and inconvenience. (*See e.g., Van Vranken v. Atlantic Riclifield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299).

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Finally, Plaintiffs request that the Court approve the payment of Seventeen Thousand Five Hundred Dollars and Zero Cents ($17,500.00) ("Settlement Administration Costs") to Apex Class Action LLC ("Apex" or "Settlement Administrator") as compensation for its administration services it has and will provide in connection with the Settlement. (*See, generally*, Nava Decl.).

In order to efficiently present the Court with adequate information to determine whether to grant final approval of the Settlement and award the Attorneys' Fees and Costs, Enhancement Payments, and Settlement Administration Costs, Plaintiffs also move for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a linen and uniform service that delivers hospitality, healthcare, and retail linen and uniforms for over ninety (90) years. Plaintiff Rodriguez was employed by Defendant as an hourly-paid, non-exempt Factory Worker-Production Line from approximately December 1988 to approximately July 2021. (Rodriguez Decl., ¶ 2). Plaintiff Menjivar was employed by Defendant as an hourly-paid, non-exempt Factory Worker-Production Line from approximately March 2005 to approximately February 2021. (Menjivar Decl., ¶ 3).

On January 18, 2022, Plaintiff Menjivar provided written notice to the California Labor and Workforce Development Agency ("LWDA") by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendant ("Menjivar PAGA Letter"). (Genish Decl., ¶ 9; Declaration of Rana Nader in Support of Notice of Motion and Motion for Final Approval of Class Action and PAGA Settlement, Attorneys' Fees and Costs, Enhancement Payments, and Settlement Administration Costs ["Nader Decl."], ¶ 7).

On March 28, 2022, Plaintiff Menjivar filed a Complaint for Violation of the California Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq*. ("Menjivar Operative Complaint") in the action entitled *Lucio Menjivar v. American Textile Maintenance Company*, Los Angeles County Superior Court Case No. 22STCV10611 ("*Menjivar* Action"), which alleges civil penalties under PAGA for Defendant's alleged failure to pay minimum wages, failure to timely pay wages during employment, failure to pay all wages due upon separation of employment, and failure to furnish accurate itemized wage statements. (Genish Decl., ¶ 10; Nader Decl., ¶ 8).

On May 31, 2022, Plaintiff Rodriguez provided written notice to the LWDA by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by Defendant ("Rodriguez PAGA Letter"). (Genish Decl., ¶ 11).

On May 31, 2022, Plaintiff Rodriguez filed a Class Action Complaint for Damages in the action entitled *Angel Rodriguez v. American Textile Maintenance*, Los Angeles County Superior Court Case No. 22STCV17855 ("*Rodriguez* Action"), thereby commencing a putative class action against Defendant alleging eight (8) causes of action for Defendant's alleged failure to pay overtime wages, failure to pay minimum wages, failure to provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest periods and premiums payments in lieu thereof, failure to provide accurate wage statements, and failure to timely pay wages upon termination, and for violations of California Business & Professions Code Section 17200, *et seq*. based on the aforementioned California Labor Code violations. (*Id*., ¶ 12).

On August 4, 2022, Plaintiff Rodriguez filed a First Amended Class Action Complaint for Damages and Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698 Et Seq. ("Rodriguez Operative Complaint"), which added a cause of action under PAGA. (*Id*., ¶ 13).

On May 16, 2023, the Parties participated in a formal mediation conducted by Jill R. Sperber, Esq. ("Mediator"), a neutral and respected mediator with extensive experience in complex wage and hour matters, which did not result in a settlement at that time. (*Id*., ¶ 14). After continued negotiations, the Parties were able to reach an agreement to resolve this dispute on a class and representative basis. (Ibid). The Parties worked diligently to negotiate and memorialize the terms in a long form settlement agreement. (Ibid).

On April 2, 2024, the Parties executed the Joint Stipulation of Class Action and PAGA Settlement ("Original Agreement"). (*Id*., ¶ 15).

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On April 29, 2024, the Court entered a Minute Order, which related the *Rodriguez* Action and *Menjivar* Action (together, "Actions"). (*Id*., ¶ 16). Also on April 29, 2024, pursuant to the Parties' joint stipulation, the Court entered an Order, which consolidated the Actions and deemed the *Rodriguez* Action the lead case. (Ibid).

On May 20, 2024, Plaintiffs filed a Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion for Preliminary Approval") and supporting documents seeking preliminary approval of the proposed settlement as set forth in the Original Agreement. (*Id*., ¶ 17).

On August 28, 2024, the Court entered a Motion for Preliminary Approval of Class Action Settlement Checklist Order ("August 28, 2024 Checklist") wherein the Court raised certain points of inquiry regarding the settlement. (*Id*., ¶ 18).

Based on the Court's points of inquiry set forth in the August 28, 2024 Checklist, the Parties negotiated and entered into the First Amended Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement," or "Settlement"). (*Id*., ¶ 19 & Exh. 2).

On October 30, 2024, Plaintiffs filed supplemental briefing that addressed the Court's points of inquiry in the August 28, 2024 Checklist. (*Id*., ¶ 20).

On December 4, 2024, the Court entered the Final Ruling Re: Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminary approving the terms of the Settlement Agreement, the Notice of Class Action Settlement ("Class Notice"), and the proposed administration procedures and associated deadlines. (*Id*., ¶ 21 & Exh. 21).

The Parties agree that the Class described herein may be certified for settlement purposes only. If for any reason the Settlement is not approved, the certification will have no force or effect and will immediately be revoked. The Parties further agree that certification for purposes of approving the Settlement Agreement is in no way an admission that class certification is proper under the more stringent standard applied for litigation and that evidence of this limited stipulation for settlement purposes only will not be admissible for any purpose in this or any other proceeding.

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III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

The Parties have agreed to settle the Class and PAGA claims at issue in the Actions for a non-reversionary Gross Settlement Amount of One Million One Hundred Seventy-Five Thousand Dollars and Zero Cents ($1,175,000.00), which is exclusive of employer-side payroll taxes. (Settlement Agreement, ¶ 6.p; Genish Decl., ¶ 24). The Gross Settlement Amount includes: (1) Class Counsel's fees in the amount of one-third (1/3) of the Gross Settlement Amount, equaling Three Hundred Ninety-One Thousand Six Hundred Sixty-Six Dollars and Zero Cents ($391,666.66); (2) Class Counsel's actual litigation costs and expenses, in the amount of Twenty-Four Thousand One Hundred Ninety-One Dollars and Twenty-Two Cents ($24,191.22); (3) Settlement Administration Costs in the amount Seventeen Thousand Five Hundred Dollars and Zero Cents ($17,500.00); (4) Enhancement Payments in the aggregate amount of Fifteen Thousand Dollars and Zero Cents ($15,000.00); and (5) PAGA Amount in the amount of Fifty Thousand Dollars and Zero Cents ($50,000.00). (Settlement Agreement, ¶¶ 6.p, 9, 10, 11, & 12; Genish Decl., ¶ 24). After the above Court-approved amounts are deducted from the Gross Settlement Amount, the Settlement Class Members will share in a Net Settlement Amount of approximately Six Hundred Seventy-Six Thousand Six Hundred Forty-Two Dollars and Twelve Cents ($676,642.12). (Settlement Agreement, ¶ 6.u; Genish Decl., ¶ 24).

The Settlement does not require Settlement Class Members to submit claims as a prerequisite to receiving their *pro rata* share of the Net Settlement Amount ("Individual Settlement Share") nor does it require PAGA Members to submit claims as a prerequisite to receiving their *pro rata* share of twenty-five percent (25%) of the PAGA Amount ("Individual PAGA Payment"). (Settlement Agreement, ¶¶ 6.q, 6.s, & 34; Genish Decl., ¶ 25). Individual Settlement Shares are calculated by the Settlement Administrator by dividing the Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek Value," and multiplying each Settlement Class Member's individual Workweeks by the Final Workweek Value. (Settlement Agreement, ¶ 14.b; Genish Decl., ¶ 25). Individual PAGA Payments are calculated by the Settlement Administrator by dividing the amount of the PAGA Members' 25% share of the PAGA Amount ("PAGA Member Amount") by the PAGA Workweeks of all PAGA Members to yield the "PAGA Workweek Value," and multiplying each PAGA Member's individual PAGA Workweeks by the PAGA Workweek

Value. (Settlement Agreement, ¶ 15; Genish Decl., ¶ 25)

Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty percent (80%) penalties, interest, and non-wage damages. (Settlement Agreement, ¶ 16; Genish Decl., ¶ 27). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Settlement Agreement, ¶ 16; Genish Decl., ¶ 27). The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their net payment of their Individual Settlement Share ("Individual Settlement Payment"). (Settlement Agreement, ¶¶ 6.r & 16; Genish Decl., ¶ 27). The employer's share of taxes and contributions in connection with the wages portion of Individual Settlement Shares shall be paid by Defendant separately and in addition to the Gross Settlement Amount. (Settlement Agreement, ¶ 6.p; Genish Decl., ¶ 27). Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Settlement Agreement, ¶ 16; Genish Decl., ¶ 27).

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. (Settlement Agreement, ¶ 34; Genish Decl., ¶ 28). Any funds associated with such canceled checks will be distributed by the Settlement Administrator to the State of California's Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Member. (Settlement Agreement, ¶ 34; Genish Decl., ¶ 28).

Upon the Effective Date, Plaintiffs and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action which were alleged or which could have been alleged based on the factual allegations in the Rodriguez Operative Complaint, arising during the Class Period, under any federal, state, or local law, and shall specifically include claims for Defendant's alleged failure to pay overtime wages; failure to pay minimum wages; failure to provide meal periods or compensation in lieu thereof; failure to provide rest periods or compensation in lieu thereof; failure to pay waiting time penalties upon termination; failure to provide accurate wage statements; violation of California Labor Code Sections 201, 202, 203, 226, 226(a), 226(c), 226.7, 226.7(b), 510, 512, 512(a), 1194, 1194.2, 1197, 1197.1, and 1198, and the applicable Industrial Welfare Commission Order; California Business and Professions Code sections 17200, *et seq*.; and any other claims, including claims for statutory penalties, pertaining to the Class Members (collectively, "Released Class Claims"). (Settlement Agreement, ¶¶ 6.ee & 35).

Upon the Effective Date, Plaintiffs, the State of California with respect to all PAGA Members, and all PAGA Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of any and all PAGA claims and/or causes of action which were alleged or could have been alleged based on the factual allegations in the PAGA Letters and Operative Complaints, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq*., including all claims for attorneys' fees and costs related thereto, for Defendant's alleged failure to pay overtime wages; failure to pay minimum wages; failure to provide meal periods or compensation in lieu thereof; failure to provide rest periods or compensation in lieu thereof; failure to pay waiting time penalties during employment and upon termination; failure to provide accurate wage statements; and failure to provide accurate payroll records; and civil penalties pursuant to California Labor Code Sections 210, 226, 226.3, 558, 1174.5, 1197.1, 2698, and 2699 in connection with violations of California Labor Code Sections 201, 202, 203, 204, 226, 226(a), 226.7, 226.7(b), 510, 512, 512(a), 558, 558.1, 1174, 1174(d), 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2802; and Industrial Welfare Commission Wage Order No. 6-2001 (collectively, "Released PAGA Claims"). (*Id*., ¶¶ 6.ff & 36).

Upon the Effective Date, in addition to the Released Class Claims and Released PAGA Claims, Plaintiffs, for themselves and their respective spouses, heirs and assigns, will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from any and all charges, complaints, claims, debts, liabilities, promises, agreements, controversies, actions, suites, rights, demands, obligations, guarantees, costs, losses, penalties, expenses, attorneys' fees, damages, or causes of action of any kind or nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, or that might have been asserted, whether in tort, contract, equity, or otherwise which Plaintiffs, at any time of execution of the Settlement Agreement, had or claimed to have or may have, including but not limited to any and all claims arising out of, relating to, or resulting from their employment, payment of wages during that employment and/or separation of employment with the Released Parties, including any claims arising under any federal, state, or local law, statute, ordinance, rule, or regulation or Executive Order relating to employment, including, but in no way limited to, any claim under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 1981; the Americans with Disabilities Act ("ADA"); the Family and Medical Leave Act ("FMLA"); the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act ("ERISA"); the California Family Rights Act ("CFRA"); the California Fair Employment and Housing Act ("FEHA"); all claims for wages or penalties under the Fair Labor Standards Act ("FLSA"); all claims for wages or penalties under the California Labor Code; Business and Professions Code sections 17200 *et seq.*; all laws relating to violation of public policy, retaliation, or interference with legal rights; any and all other employment or discrimination laws; whistleblower claims; any tort, fraud, or constitutional claims; and any breach of contract claims or claims of promissory estoppel. (*Id.*, ¶ 37). It is agreed that this is a general release and is to be broadly construed as a release of all claims, provided that, notwithstanding the foregoing, this Paragraph expressly does not include a release of any claims that cannot be released hereunder by law. (Ibid). Plaintiffs understand and expressly agree that the Settlement Agreement extends to claims that they have against Defendant, of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on or before the execution of the Settlement Agreement. (Ibid). Any and all rights granted under any state or federal law or regulation limiting the effect of the Settlement Agreement, including the provisions of Section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED. (Ibid). Section 1542 of the California Civil Code reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER,

WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. (Ibid).

The "Released Parties" means Defendant and its present and former officers, directors, members, owners, shareholders, assigns, subsidiaries, attorneys, insurers, successors, predecessors, and affiliates. (*Id*., ¶ 6.gg).

IV. THE SETTLEMENT ADMINISTRATION PROCESS

Apex has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Preliminary Approval Order.

Pursuant to the Court's direction, the Parties' counsel requested that Apex calculate the Workweeks to determine whether the escalator clause of the Settlement Agreement was triggered. (Nava Decl., ¶ 4). On September 16, 2024, Defendant's counsel provided Apex with the initial data of each Class Member needed for Apex to calculate the Workweeks. (Ibid). The initial data file was successfully uploaded to Apex's database, where it underwent a thorough review to identify any duplicates or potential inconsistencies. (Ibid). After which, Apex calculated the Workweeks. (Ibid). The initial data file consisted of a total of 1,481 individuals who worked a total of 109,614 Workweeks. (Ibid). Based on Apex's calculations, the escalator clause was not triggered. (Ibid).

On December 4, 2024, Class Counsel provided Apex with the Court-approved content for the Class Notice. (*Id*., ¶ 5). Apex then generated a draft of the formatted Class Notice, which received approval from the Parties' counsel before being mailed. (Ibid).

On December 9, 2024, Defendant's counsel provided Apex with updated data of each Class Member needed for the mailing of the Class Notice. (Id., ¶ 6). The updated data file was successfully uploaded to Apex's database, where it underwent a thorough review to identify any duplicates or potential inconsistencies. (Ibid). Upon reviewing the updated data file, Apex identified four duplicates. (Ibid). Accordingly, the updated data file consisted of a total of 1,477 individuals who worked a total of 109,613 Workweeks. (Ibid). Based on Apex's calculations, the escalator clause was not triggered. (Ibid).

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In preparation for the mailing process, all 1,477 names and addresses listed in the Class List underwent verification and updating against the National Change of Address (NCOA) database maintained by the United States Postal Service (USPS). (*Id*., ¶ 7). The purpose of this step was to ensure the accuracy and validity of the Class Members' mailing addresses before sending out the Class Notice. (Ibid). The NCOA database contains records of requested address changes submitted to the USPS. (Ibid). If an updated address was found in the NCOA database, it was utilized for the mailing of the Class Notice. (Ibid). However, in cases where no updated address was found in the NCOA database, the original address provided by Defendant's counsel was used for the mailing of the Class Notice. (Ibid).

On December 13, 2024, the Class Notice was sent to all 1,477 individuals listed in the Class List using U.S First Class Mail. (*Id*., ¶ 8). Apex received 216 returned Class Notices as undeliverable. (*Id*., ¶ 9). Apex conducted a computerized skip trace on the 216 returned Class Notices in order to acquire updated addresses for the purpose of re-mailing the Class Notice. (Ibid). This skip trace effort resulted in obtaining 147 updated addresses, to which Apex promptly re-mailed the Class Notices via U.S First Class Mail. (Ibid). 69 Class Notices have been considered undeliverable as no updated address was found despite conducting skip tracing. (Ibid).

Class Members had forty-five (45) calendar days after the Settlement Administrator mailed the Class Notices to submit a Request for Exclusion, Notice of Objection, and/or Workweeks Dispute ("Response Deadline"). (Settlement Agreement, ¶ 6.ii). The Response Deadline was January 27, 2025. (Nava Decl., ¶¶ 10-12). The Settlement Administrator did not receive any Requests for Exclusion, Notice of Objections, and/or Workweeks Disputes. (Ibid).

The estimated highest gross Individual Settlement Share is $2,014.36, the estimated average gross Individual Settlement Share is $454.19, and the estimated lowest gross Individual Settlement Share is $3.50, the estimated highest Individual PAGA Payment is $37.84, the estimated average Individual PAGA Payment is $11.81, and the estimated lowest Individual PAGA Payment is $0.03. (*Id*., ¶¶ 15 & 17).[1]

[1] The actual highest, average, and lowest Individual Settlement Shares will be larger than the amounts stated in the Nava Decl. because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than $30,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., $5,808.78 will be part of the Net Settlement Amount).

V. COMPLIANCE WITH PROCEDURAL REQUIREMENTS OF PAGA

On October 28, 2024, Class Counsel submitted a copy of the Settlement Agreement to the LWDA through its online submission portal in compliance with California Labor Code § 2699(l)(2). (Genish Decl., ¶ 29). The LWDA has not objected or otherwise responded to the submissions. (Ibid).

VI. EVALUATION OF SETTLEMENT FOR FINAL APPROVAL

A. The Legal Standard for Final Approval

Before granting final approval of a class action settlement, the Court must review the settlement for fairness. (Cal. Rules of Court, rule 3.769(g); *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801). A court must take into account relevant factors, including, for example, the strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, and the reaction of the class members to the proposed settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45; *Dunk*, 48 Cal.App.4th at 1801 ["The list of factors is not exhaustive and should be tailored to each case"]; *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625). Considering such factors, 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. (*Wershba*, 91 Cal.App.4th at 245; *Dunk*, 48 Cal.App.4th at 1802). "The settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits. [The trial court is not] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." (*Officers for Justice*, *supra*, 688 F.2d at 625).

B. The Settlement Should be Finally Approved

California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties' settlement negotiations were at all times made at arm's-length and were adversarial. (Genish Decl., ¶ 30). The Parties engaged in extensive informal discovery prior to reaching a settlement at the mediation. (*Id*., ¶ 31).

C. The Settlement is Fair and Reasonable

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation, Defendant produced a random 25% sampling of putative class members' time and pay data and records. (Genish Decl., ¶ 31). The random sampling was conducted by sorting putative class members' last names alphabetically, then selecting every third employee until the 25% sampling was met. (Ibid). Defendant also produced relevant wage and hour policies, and information regarding the total number of putative class members, the total number of current putative class members, and the average rate of pay of the putative class members. (Ibid).

Based on the information exchanged, the Parties extensively briefed issues regarding class certification and liability and provided their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective positions. (*Id*., ¶ 32). Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar").

At all times, Plaintiffs were willing and prepared to litigate this matter through class certification and trial if the Parties had been unable to reach a favorable resolution. (*Id*., ¶ 32). Additionally, settlement negotiations were conducted by highly capable and experienced counsel. (Ibid). Class Counsel are respected members of the California State Bar with strong records of vigorous and effective advocacy and are experienced in handling complex wage and hour class action litigation. (Genish Decl., ¶¶ 3-8 & 42; Nader Decl., ¶¶ 1-6 & 25). Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).

Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and factual grounds for defending the Actions. Based upon Class Counsel's experience litigating similar complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class certification and the merits of the Actions absent a settlement.

Class Counsel are aware of Defendant's defenses and arguments and have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, including those involved in class and/or representative adjudication. (Genish Decl., ¶ 34). Plaintiffs further recognize the burdens of proof necessary to establish liability for the claims asserted in the Actions, Defendant's defenses, and the difficulties in establishing entitlement to monetary recovery. (Ibid). Plaintiffs have also considered the Parties' settlement discussions, as well as the evaluations of the Mediator, who is experienced and well-regarded in complex labor and employment matters. (Ibid).

Defendant denied and continues to deny any liability and wrongdoing of any kind associated with the claims alleged in the Actions, and further denies that class certification is appropriate for any purpose other than the Settlement. (*Id*., ¶ 35). Defendant believes that it would ultimately prevail in the Actions. (Ibid). Defendant proffered defenses to both certification and to the merits of Plaintiffs' claims. (Ibid). Defendant contended that Plaintiff Rodriguez's claims are not suitable for class certification because individual issues would predominate should this case go to trial. (Ibid). As with all class actions, these complex cases raise difficult management and proof issues and, accordingly, there is a significant risk that the Court may deny class certification. (Ibid).

More significantly, Defendant contends that the Class Members and PAGA Members who are drivers qualify as exempt under the Federal Motor Carrier's Safety Act ("FMCSA") and the California state law equivalent and are therefore not even subject to California's overtime or break laws. (*Id*., ¶ 36). In addition, Defendant contends that Class Members are subject to enforceable individual written arbitration agreements with Defendant that contain valid class action waivers which Defendant argues would have severely impacted the matter on certification issues, as well as ultimate potential liability for damages. (Ibid).

Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. (*Id.*, ¶ 37). In order to prove liability and damages, Class Counsel would need to request and analyze thousands of pages of documents, contact the Class Members, and obtain declarations at great expense. (Ibid). Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. (Ibid). On the other hand, Defendant would likely be able to obtain the cooperation of their employees. (Ibid). Moreover, even if Plaintiffs prevailed at class certification and trial, possible appeals would substantially delay any recovery by the Class. (Ibid).

In light of the Parties' respective legal positions and the risks of continued litigation, the Gross Settlement Amount for resolution of the Class and PAGA claims, is fair, adequate, and reasonable. (*Id.*, ¶ 38).

VII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE AND SHOULD BE APPROVED

Class Counsel seeks one-third (1/3) of the Gross Settlement Amount (i.e., $391,666.66) for fees for the time spent litigating this matter and reimbursement of actual costs and expenses totaling Twenty-Four Thousand One Hundred Ninety-One Dollars and Twenty-Two Cents ($24,191.22) incurred in the prosecution of the Actions. (Genish Decl., ¶ 39; Nader Decl., ¶ 29). The requested fees and costs are fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits achieved by Class Counsel for the Class Members. (Ibid).

A. Plaintiffs' Fee Request of One-Third (1/3) of the Gross Settlement Amount is Proper Under the Common Fund Doctrine

Courts have long recognized the "common fund" or "common benefit" doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund. (*See Serrano v. Priest ("Serrano III")* (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162, 16 7; *see also Boeing Co. v. Van Gernert* (1980) 444 U.S. 472,478; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 391-392).

The California Supreme Court has held that, "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 attorneys' fees out of the fund." (*Serrano III, supra,* 20 Cal.3d at 34, quoting *D'Amico,* 11 Cal.3d 1; *see also Boeing, supra,* 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney' s fee from the fund as a whole."); *Mills, supra,* 396 U.S. at 391-392 (United States Supreme Court endorsing the common fund approach in class actions)). California Practice Guide: Civil Trials and Evidence (The Rutter Group) at § 17:172.3 explains the common fund doctrine as follows:

> Where the lawsuit results in the recovery of a fund or property benefiting others as well as plaintiff (e.g., a class action), the court has inherent equitable power to order plaintiffs attorney fees paid out of the common fund or property [citations]. Such fee spreading assures that all of those benefited by the litigation pay their fair share of obtaining the recovery.

The percentage-of-the-fund approach appears to be the preferred method of awarding fees in traditional common fund cases, such as this case. Where the settlement amount is a "certain or easily calculable sum of money," use of the percentage-of-the-fund method is appropriate. (*Serrano III,* 20 Cal. 3d at 35).

In *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, a wage and hour class action wherein class counsel obtained a $19 million non-reversionary settlement on behalf of the class, the California Supreme Court approved the use of the percentage of fund or common fund method to award one-third of the settlement amount or $6,333,333.33 to class counsel for attorneys' fees. The Court stated:

> Whatever doubts may have been created by Serrano III, supra, 20 Cal.3d 25, [], or the Court of Appeal cases that followed, we clarify today that use of the percentage method to calculate a fee in a common fund case, where the award serves to spread the attorney fee among all the beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join the overwhelming majority of federal and state courts in holding that when class action litigation established a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of

> that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. 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.

(*Laffitte*, 1 Cal.5th at 503).

In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, the California Supreme Court recognized that the common benefit 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."

Numerous appellate courts have similarly found. (*See e.g., Knoff v. City and County of San Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a "contingent percentage" award of attorneys' fees in a representative action as the proper exercise of the court's broad equitable powers); *Rider v. County of San Diego* (1992) 1 I Cal.App.4th 1410, 1423 (attorneys' fees and expenses properly awarded from common benefit composed of illegally imposed sales and use tax); *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners of residential property in an inverse condemnation action)).

The Supreme Court noted that several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. (*Laffitte*, 1 Cal.5th at 503; *see Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373, 1375). The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79). The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney's fees. (*Lealao*, 82 Cal.App.4th at 30-31; *see e.g., In re Pac. Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 (approving attorney's fee of 33%)).

A fee of one-third (1/3) of the Gross Settlement Amount (i.e., $391,666.66) is easily within the range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig*., 723 F. Supp. at 1378). According to Professor Newberg: "No general rule can be articulated on what is a reasonable percentage of a common fund…Usually 50 per cent of the fund is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a disproportionate part of the recovery obtained for the class, though somewhat larger percentages are not unprecedented." (Newberg on Class Actions (4th Ed.), § 14.6). Class Counsel's requested fee is reasonable and falls well within the historical range of attorney's fee awards under the common fund theory. Based on Class Counsel's showing of reasonableness, the Court should approve the requested fees pursuant to the common fund approach.

B. The Circumstances of this Case Support a One-Third (1/3) Fee Award

Given the significant results achieved under the circumstances of this litigation, the requested fee award is reasonable. As discussed in *Sumitomo Copper Litigation, supra,* 74 F. Supp. 2d at 396:

> No one expects a lawyer whose compensation is contingent on the success of his services to charge, when successful, as little as he would charge a client who in advance of the litigation has agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

In that vein, this Court should consider the contingent nature of this case, the uncertainty of the outcome, the quality of the counsel, and the preclusion from other employment.

C. The Contingent Nature of This Matter

From the outset of the Actions to the present, prosecution of this matter has involved significant financial risk for Class Counsel. Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. Class Counsel has placed its own resources at risk to prosecute this matter with no guarantee of success. The risks of this matter are apparent in that class certification would likely have been a hard-fought issue, especially given the uncertainty regarding certification of cases such as this. Moreover, even if class certification were granted over Defendant's opposition, there was no assurance that Plaintiffs would succeed at trial. (Genish Decl., ¶¶ 33-37). Despite such challenges, Class Counsel was able to persuade Defendant that it faced significant liability exposure such that it was willing to pay $1,175,000.00 to settle the Class Members' claims.

D. The Experience, Reputation, Ability of Counsel, and Skill in Litigation

Class Counsel has substantial experience in wage-and-hour and other class action litigation, including litigation involving the legal issues in this matter. (Genish Decl., ¶¶ 3-8 & 42; Nader Decl., ¶¶ 1-6 & 25). Class Counsel's skill in developing a factual record and convincing Defendant of its litigation exposure under California law was essential to achieving the Settlement. Through its skill and reputation, Class Counsel was able to obtain a settlement that provides an outstanding result for Class Members. (*See generally* Genish Decl.).

E. The Results Achieved

The excellent results achieved by the Settlement support Class Counsel's request for attorneys' fees. Class Members' support for the results achieved by Class Counsel is demonstrated by the absence of any objections to either the Class Settlement or to Class Counsel's request for fees, both of which were described clearly in the Class Notice. As of the date of this Motion, Settlement Class Members will be paid, on average, approximately $454.19 each, which is intended to compensate them for the alleged wage and hour violations they suffered during their employment. (Genish Decl., ¶ 26). This is a significant benefit for the Settlement Class Members here as it represents a recovery for highly disputed claims. Equally important is the fact that the State of California will receive $37,500.00 for enforcement of labor laws and education of employers. (*Id*., ¶ 48).

Furthermore, the efficiency with which this litigation was conducted and resolved should be rewarded. After preparing and investigating the case prior to filing the Actions, Class Counsel strongly litigated and then resolved the cases in an efficient manner. The Class Members will directly benefit from the prompt and fair resolution of their claims. They will be receiving a significant award in a relatively short period of time, as opposed to waiting years to recover some undetermined amount if they succeeded at trial, which is an uncertainty in itself.

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F. Preclusion of Other Employment

As California law recognizes, Class Counsel's commitment to this litigation should not be assessed in a vacuum. (*See Serrano, supra,* 20 Cal.3d at 49). A relevant factor in determining attorneys' fees is whether the litigation required Class Counsel to forego other employment. (*See ibid*). Class Counsel had to consider its workload during this litigation when considering taking on additional work that was available, and which Class Counsel had to forego in order to devote the time necessary to pursue this litigation. (Genish Decl., ¶ 41).

G. The Requested Fees Are Also Justified Under the Lodestar Method

Fee calculations under the lodestar method would result in a similar award, demonstrating the fairness of Class Counsel's percentage fee request. 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. The base amount is then adjusted by use of a multiplier in light of various factors. (*Serrano 111, supra,* 20 Cal.3d at 48). Class Counsel's hourly rates are summarized in the Genish Decl. at ¶¶ 42-43 and Nader Decl. at ¶ 29.

One difficulty in determining the hourly rate of attorneys of similar skill and experience in the relevant community is the scarcity of hourly fee-paying clients in class action litigation. (Genish Decl., ¶ 43). As a practical matter, few if any employees or consumers pay attorneys' fees on an hourly basis for such extensive litigation, and thus retainer agreements in such cases are based on a stepped-up contingency fee (with the percentage increasing from one third to forty-five – and sometimes even fifty percent, which is on par with personal injury contingency fee agreements – if the case goes to trial). (Ibid). Therefore, there is no customary hourly billing rate for work that is routinely based on a contingent fee relationship, but the nature of class action work should be strongly considered by the Court. (Ibid). Wage and hour work presents a specialized and challenging area of law that is not within the knowledge of many lawyers. (Ibid). This kind of class action work requires specialized learning and the willingness to take large risks. (Ibid).

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Class Counsel has spent approximately 431.40 total hours litigating these claims to date.[2] (Genish Decl., ¶ 43; Nader Decl., ¶ 29). Class Counsel expects to spend another 10 hours in connection with the final approval process (including preparing for and attending the Final Approval Hearing and managing the Settlement through its conclusion, including anticipated communications with defense counsel, the Settlement Administrator, our clients, and Class Members). (Genish Decl., ¶ 44). In addition to time spent during litigation, reasonable hours also include the time spent before the Actions were filed, including time spent interviewing the clients, investigating the facts and the law, preparing the initial pleadings, as well as litigating the cases. (*Webb v. Board of Educ.* (1985) 471 U.S. 234). Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. (*Serrano v. Priest* (1982) 32 Cal .3d 621, 639 ("*Serrano IV*")). Based on the rates of Class Counsel, the total fees incurred to date are $379,103 (Genish Decl., ¶ 43; Nader Decl., ¶ 29). By the conclusion of this matter, the total fees are estimated to be approximately $389,603 (Genish Decl., ¶ 44).

In cases where a common fund analysis is not used, once the court establishes the lodestar amount, it should adjust the fee award by a multiplier in order to make an appropriate fee award. (*Serrano III, supra,* 20 Cal.3d at 48). In applying the multiplier, *Newberg on Class Actions* states that "[m]ultiples ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied. A large common fund award may warrant an even larger multiplier." (4 *Newberg on Class Actions* 4th (4th ed. 2002) § 14.6). If the class members paid the fees that the market would bear, they would pay a fee of anywhere from one-third to forty-five percent of any recovery. Since this is the market rate, the lodestar calculation should be enhanced to reflect what the class members would pay on the open market. (*Lealao, supra,* 82 Cal.App.4th at 47-48).

In *Lealao,* the court held that trial courts should award lodestar fees by examining the percentage-of-the-benefit and adjusting the lodestar calculation accordingly. (*Id.* at 49 & 53). The court indicated that this is an upward adjustment and should be akin to a contingency fee recovery;

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[2] In *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559, the court addressed the issue of what evidence is required in California to support a fee application. The court held: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Id.* There is no need to attach the voluminous invoices prepared in a case as a basis for an award of fees and costs. *Id.* Through Class Counsel's declarations in support of this application, however, Plaintiff presents a thorough breakdown of the hours spent and costs incurred in prosecuting this class action. Pursuant to *Martino, supra,* this presentation is sufficient to support the amount requested.

the court stated, "[a]n adjustment reflecting the amount of the class recovery is not significantly different from an adjustment reflecting a percentage of that amount; and California courts have evaluated a lodestar as a percentage of the benefit." (*Id.* at 46). The *Lealao* method appears particularly appropriate because class actions generally are contingency fee cases for plaintiffs - and the class action clients do not expect to pay an hourly fee.

The rationale of *Lealao* comports with the purpose of the multiplier. The multiplier is "primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of nonpayment in contingency cases." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138). The *Lealao* court reasoned:

> Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior. It has therefore been urged (most persistently by Judge Richard Posner) that in defining a reasonable fee in such representative actions, the law should mimic the market.
>
> In the class action context, that would mean attempting to award the fee that informed private bargaining, if it were truly possible, might have reached. The simplest way for the law to duplicate the bargain that informed parties would reach if agency costs were low is to look to fee award levels in actions brought by sophisticated private parties under the same or comparable statutes.

(*Lealao,* 82 Cal.App.4th at 47-48 (internal citations and quotations omitted)). The court added:

> [T]rial judges need the flexibility *Serrano III* provides, as it enables them to relate fee awards to the economic realities that determine the efficacy of the private enforcement contemplated by our civil justice system.
> Accordingly, we hold that, in cases in which the value of the class recovery can be monetized with a reasonable degree of certainty and it is not otherwise inappropriate, a trial court has discretion to adjust the basic lodestar through the application of a positive or negative multiplier where necessary to ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation.

(*Id.* at 49-50).

In looking at similar cases, including those set forth above, Class Counsel's requested fee comports to the market. Based on the reasonable hourly rates suggested by Class Counsel and the collective hours worked in this matter, the requested fee award would represent a multiplier of 1.005 of the current total fee lodestar. In this regard, Class Counsel's fee request is reasonable.

H. No Class Member Objected to the Requested Attorneys' Fee Award

Class Counsel's intention to request the Court's approval for payment of attorneys' fees was clearly disclosed to each Class Member in the Court-approved Class Notice. (Genish Decl., ¶ 35; *See also,* Nava Decl., Exh. A). As of the filing of this Motion, there has not been a single objection to the request for attorneys' fees. (Nava Decl., ¶ 11). It is fair to conclude that the Class approves of/does not take issue with the requested award of attorneys' fees. Based thereon, Class Counsel's request for one-third (1/3) of the Gross Settlement Amount, equaling Three Hundred Ninety-One Thousand Six Hundred Sixty-Six Dollars and Zero Cents ($391,666.66), should be granted.

I. Plaintiffs' Cost Request is Reasonable

Class Counsel seeks reimbursement of a total amount of Twenty-Four Thousand One Hundred Ninety-One Dollars and Twenty-Two Cents ($24,191.22) in costs and expenses in this matter, which includes reasonable future costs for filing the Motion. (Genish Decl., ¶ 39 & Exh. 4; Nader Decl., ¶ 25). All costs and expenses were reasonably incurred in prosecution of this matter.

VIII. THE REQUESTED ENHANCEMENT PAYMENTS TO PLAINTIFFS ARE REASONABLE

The named Plaintiffs should be awarded Enhancement Payments in the amount of Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) each (total, $15,000.00) for their services to the Class and PAGA Members and the risks in connection with those roles. (Genish Decl., ¶ 46; Nader Decl., ¶ 30). Enhancement awards in wage and hour cases typically range from $5,000.00 to $20,000.00, although some awards are higher. (Genish Decl., ¶ 46). Often, multiple class representatives receive awards in the above range. (*See e.g.*, *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 [approving an enhancement request of $10,000.00 per named plaintiff in a 188 member class]; *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) ["We also think there is something to be said for rewarding those drivers who protect and help to bring rights to a group of employees who have been the victims of discrimination."]). Additionally, enhancement awards incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. (*See, e.g., Bell v. Farmers Ins. Exch*., 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the action); *Clark v. Am. Residential Servs., LLC*, 175 Cal.App.4th 785, 804 (2009) ("an incentive award is appropriate 'if it is necessary to induce an individual to participate in the suit'")). Here, the requested Enhancement Payments iare modest, reasonable, and should be approved.

Plaintiffs' actions establish that: (1) they sought to protect the interests of the Class and PAGA Members above their own personal interests; (2) the Settlement Class Members and PAGA Members will be benefitted from their actions by receiving a payment without having to do anything; and (3) Plaintiffs have put forth a significant amount of time and effort pursuing the litigation and seeing it through to resolution. (*See*, generally, Rodriguez Decl. and Menjivar Decl.).

The requested awards for Plaintiffs are also reasonable given the financial and personal risk they took in commencing the Actions, and in light of the benefits that their actions have conferred upon the Class and PAGA Members. (Rodriguez Decl., ¶ 7; Menjivar Decl., ¶ 8; *See also Van Vranken v. Atl. Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294, 299-300). Additionally, in considering a requested class representative enhancement award, courts take into consideration a plaintiff's reasonable fear of retaliation. (*Staton v. Boeing Co*. (9th Cir. 2003) 327 F.3d 938, 977). Here, it is easy to see that a potential future employer could expend little effort to discover Plaintiffs brought the lawsuits – and based thereon, decline to offer Plaintiffs employment.

In sum, Plaintiffs have performed considerable services on behalf of the Class and PAGA Members during the litigation. (*See*, generally, Rodriguez Decl. and Menjivar Decl.). Class Counsel cannot understate the importance of the role of an employee who is willing to search out an attorney and step forward to assume the risk of litigation and retaliation in order to represent a class and put the interests of the class before their own interests. Plaintiffs were the catalyst to the benefit reached for the Class Members, and have actively protected the Class Members' and PAGA Members' interests during the pendency of this matter and will continue to do so even if the cases were required to go to trial. (Rodriguez Decl., ¶ 10; *See*, generally, Menjivar Decl.). Plaintiffs spent numerous hours participating in this matter by searching for an attorney, communicating with their attorneys on numerous occasions, searching for and producing relevant documents related to their employment, responding to their attorneys' inquiries, reviewing the settlement documents, and approving the Settlement on behalf of all Class Members. (*See*, generally, Rodriguez Decl. and Menjivar Decl.).

In contrast, without having to take on any of the risk incurred by Plaintiffs or time spent by Plaintiffs in litigating this matter, Settlement Class Members will automatically be issued a payment for their claims. It appears that the Settlement Class Members recognize these enhancements were justified because since the time the Class received notice of the requested Enhancement Payments, no one has objected to the request. Thus, the Enhancement Payments to Plaintiffs are warranted to compensate them for their time and effort, the fear and stress associated with assuming the responsibility of serving as the Class and PAGA representatives, and the concrete risks they assumed as the Class and PAGA representatives.

IX. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE

In Plaintiffs' Motion for Preliminary Approval, Plaintiffs requested, and the Court approved, Settlement Administration Costs not to exceed Twenty-Five Thousand Dollars and Zero Cents ($25,000.00). (Genish Decl., ¶ 47). Apex is the approved Settlement Administrator. (Ibid). It is an experienced class administrator and has adequately performed the administration tasks required by the Preliminary Approval Order. Apex's *actual* costs to administer the Settlement are only Seventeen Thousand Five Hundred Dollars and Zero Cents ($17,500.00). (Nava Decl., ¶ 18 & Exh. B). Based thereon, the requested costs should be approved.

X. THE PROPOSED LWDA ALLOCATION IS REASONABLE

Pursuant to California Labor Code Section 2699(1), the Superior Court shall review and approve the settlement of penalties sought under that California Labor Code Section. (Cal. Lab. Code § 2699(1)). For all of the reasons stated above, the Settlement is fair, reasonable, and adequate, and should be approved. As part of the Settlement, Defendant has agreed to pay Fifty Thousand Dollars and Zero Cents ($50,000.00) to settle the claims of the PAGA Members brought pursuant to PAGA, of which the payment of Thirty-Seven Thousand Five Hundred Dollars and Zero Cents ($37,500.00) (75% of the PAGA Amount) will be paid to the LDWA for education and enforcement purposes. (Genish Decl., ¶ 48).

It is extremely common in approved wage and hour class action cases that settle that only a small portion of the total settlement is paid to PAGA penalties "in order to maximize payments to class members." (*Magadia v. Wal-Mart Assocs*. (N.D. Cal. May 31, 2019, No. 17-CV-00062-LHK)

2019 U.S. Dist. LEXIS 91732, *90-91, citing as examples *Ceja-Corona v. CVS Pharm., Inc*. (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 [preliminarily approving $10,000 in PAGA penalties out of a total settlement amount of $900,000]; *Thio v. Genji, LLC* (N.D. Cal. 2014) 14 F. Supp. 3d 1324, 1330 [preliminarily approving $10,000 in PAGA penalties out of a total settlement amount of $1,250,000]; *Franco v. Ruiz Food Prods*. (E.D. Cal. Nov. 27, 2012) 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 [granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $2,500,000]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012) 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 [granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $3,700,000]; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1 [granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $6,900,000]). Like here, in these approved settlements, the parties generally maximized statutory penalties and minimized PAGA penalties to focus on claims to the class members, the persons who actually suffered the California Labor Code violations. (Genish Decl., ¶ 49).

XI. THE CLASS RECEIVED THE BEST PRACTICABLE NOTICE

California law vests the Court with broad discretion in fashioning an appropriate notice program. (*See* California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74). To protect the rights of absent class members, the parties must provide class members with the best notice practicable of a potential class action settlement. (*Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76 [individual notice must be sent to all class members who can be identified through reasonable efforts]; *Mullane v. Central Hanover Bank & Garretson Company* (1950) 339 U.S. 306, 314 [best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”]). The content and method of the notice should be designed to apprise the class members of the terms of the proposed settlement and of the class members' rights regarding the settlement. (*See Mullane*, *supra*, 339 U.S. at 314; *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323 F. Supp. 364, 378).

The Class Notice approved by the Court met these requirements: it identified the Parties and described the Actions, the Class, the Gross Settlement Amount, the proposed method for distribution of the Gross Settlement Amount, the amounts proposed to be paid as the Enhancement Payments to Plaintiffs, the Settlement Administration Costs to the Settlement Administrator, and the Attorneys' Fees and Costs to Class Counsel. (Genish Decl., ¶ 50; *see also* Nava Decl., Exh. A thereto). The Class Notice described the proposed Settlement with enough specificity to allow each Class Member to make an informed choice whether to accept and participate in it. (Ibid). It also explained how and when Class Members may object to or opt out of the Class Settlement. (Ibid). Finally, the Class Notice provided the date for the hearing on final approval of the Settlement and informed Class Members how to obtain additional information about the Settlement. (Ibid).

XII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement, and approve: (1) the requested attorneys' fees to Class Counsel of $391,666.66; (2) the requested reimbursement of actual costs and expenses to Class Counsel of $24,191.22; (3) the requested Enhancement Payments to Plaintiffs of $15,000.00 ($7,500.00 each); and (4) the requested Settlement Administration Costs to the Settlement Administrator of $17,500.00; and permit the filing of a memorandum that exceeds the page limit.

Respectfully submitted,

Dated: February 25, 2025

BLACKSTONE LAW, APC

By: ____________________
Jonathan M. Genish
Attorneys for Plaintiff Angel Rodriguez
and the Class

Dated: February 25, 2025

PROXY LAW FIRM LLP

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