

**JAMES HAWKINS APLC**

James R. Hawkins (192925)  
Christina Lucio (253677)  
Nicholas Schieffelin (302329)  
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: nick@jameshawkinsaplc.com

Attorneys for SOVATANA SAUT and  
JOHN HISATO NAKATANI individually  
and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

SOVATANA SAUT and JOHN HISATO  
NAKATANI, individually and on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

MCKESSON CORPORATION, a Delaware  
Corporation; and DOES 1-50, inclusive,

Defendants

Case No. 22STCV28690

Assigned for All Purposes to:  
Hon. Maureen Duffy-Lewis  
Dept.: 38

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR AWARD OF  
ATTORNEYS' FEES, COSTS, AND  
CLASS REPRESENTATIVES' SERVICE  
PAYMENTS**

Date: July 14, 2025  
Time: 9:30 a.m.  
Dept.: 38

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Trial Date: None Set

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1   **I.   INTRODUCTION**

2           In connection with the \$2,250,000.00 Settlement secured by Plaintiffs Sovatana Saut and  
3 John Nakatani (“Plaintiffs”) on behalf of the Class, Plaintiffs respectfully request that the Court  
4 grant this Motion for Award of Attorneys’ Fees and Costs and Class Representatives’ Service  
5 Payments, granting an award of no more than 35% of the common fund totaling \$787,500 for  
6 attorneys’ fees, and actual litigation costs in the amount of \$39,540.51. Further, Plaintiffs request  
7 that this Court approve Class Representatives’ Service Payments in the amount of \$10,000.00 to  
8 each Plaintiff for the time, effort, and risk they undertook in obtaining this settlement for the  
9 Class and in consideration for the broad releases they are required to enter.

10          The requested fee falls well within the benchmark of 25% to 40% of a common fund and  
11 is fair compensation for undertaking such complex, risky, and time-consuming litigation on a  
12 contingent basis. Here, Class Counsel’s lodestar is currently \$416,847.50 and will only continue  
13 to increase. Further, the requested fee award only requires a modest lodestar multiplier of 1.88,  
14 which is within the range of multipliers approved by California courts. See e.g., *Wershba v. Apple*  
15 *Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001) (“Multipliers can range from 2 to 4 or even  
16 higher.”)

17          This settlement was only achieved through the vigorous pursuit of Plaintiffs’ claims by  
18 Class Counsel. A detailed summary of the action is provided in paragraphs 17-19 of the  
19 Declaration of James Hawkins in Support of Preliminary Approval (“Hawkins Preliminary  
20 Decl.”), which is attached as Exhibit 2 to the Declaration of James Hawkins in Support of  
21 Plaintiffs’ Motion for Final Approval (“Hawkins Final Decl.”).

22          Since the attorneys’ fees requested are within the range of reasonableness and the results  
23 achieved for the Class Members are excellent, Plaintiffs, by and through Class Counsel,  
24 respectfully request that the Court award the requested fees of \$787,500 and approve payment of  
25 Class Counsel’s actual litigation expenses in the amount of \$39,540.51 in accordance with the  
26 preliminarily approved Settlement. In addition, Plaintiffs respectfully request the Court approve  
27 the requested Class Representatives’ Service Payments in the amount of \$10,000.00 to Plaintiff  
28

1 Sovatana Saut and \$10,000 to Plaintiff John Nakatani for their efforts in this case, and in  
2 exchange for a general release.

3 **II. THE ATTORNEYS' FEES REQUESTED ARE FAIR AND REASONABLE AND**  
4 **SHOULD BE APPROVED**

5 In defining a reasonable fee, the Court should mimic the marketplace for cases involving a  
6 significant contingent risk such as this one. Given the unique reliance of our legal system on  
7 private litigants to enforce substantive provisions of law in class actions, attorneys providing  
8 these substantial benefits should be paid an award equal to the amount negotiated in private  
9 bargaining that takes place in the legal marketplace. *Deposit Guaranty Nat. Bank, Jackson, Miss.*  
10 *v. Roper*, 445 U.S. 326, 338, reh'g. denied, 446 U.S. 947 (1980). "When a fee is set by a court  
11 rather than by contract, the object is to set it at a level that will approximate what the market  
12 would set. . . . The judge, in other words, is trying to mimic the market in legal services." *Gaskill*  
13 *v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998). The "percentage of the fund method more  
14 accurately reflects the results achieved." *Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th 480,  
15 439 (2016); see also *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19, 50 (2000) ("...in  
16 cases where the class recovery can be monetized with a reasonable degree of certainty... a trial  
17 court should adjust the basic lodestar through the application of a positive or negative multiplier  
18 where necessary to ensure that the fees awarded is within the range of freely negotiated in the  
19 legal marketplace in comparable litigation.")

20 At the time this case was brought, the result was far from certain. Defendant's numerous  
21 defenses to the case created difficulties with proof and complex legal issues for Class Counsel to  
22 overcome. While Class Counsel believes Plaintiffs' claims are meritorious, Defendant has denied  
23 liability, disputed damages, and raised factual and legal arguments which could render the Class  
24 Members' claims worthless at either class certification or trial. Specifically, Defendant argued,  
25 *inter alia*, that Court could significantly reduce the civil penalties specified under PAGA,  
26 Plaintiffs' PAGA claim is unmanageable, a Court could rule that Plaintiffs' claims are not  
27 certifiable or without merit in light of recent case law, Plaintiffs would have difficulty certifying  
28 their claims, Plaintiffs' derivative claims are meritless and Plaintiffs would fail to meet the

1 requisite standards for such penalties, and Defendant complied with the law at all times and the  
2 claims lacked factual basis. (Hawkins Preliminary Decl. at ¶¶ 6-11).

3 The Settlement was possible only because Class Counsel was able to convince Defendant  
4 that Plaintiffs could prevail regarding liability, obtain and maintain class certification for the  
5 Class through trial, and overcome difficulties in proof as to monetary relief. In successfully  
6 navigating these hurdles so as to convince Defendant to settle, Class Counsel displayed skills  
7 consistent with those that might be expected of attorneys of comparable experience. (Hawkins  
8 Final Decl. ¶¶ 42-50).

9 To represent the Class on a contingent fee basis, Class Counsel had to devote the  
10 necessary time and resources to this case. (Id. ¶¶ 52-54). In so doing, Class Counsel gave up the  
11 hourly work that a firm can rely on for the risky contingent fee work in this case. *Powers v.*  
12 *Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000).

13 **III. THE AGREEMENT FOR THE PAYMENT OF FEES AND EXPENSES IS**  
14 **APPROPRIATE AND SHOULD BE ENFORCED**

15 The United States Supreme Court has ruled that the parties to a class action may properly  
16 negotiate not only the settlement of the action itself, but also the payment of attorneys' fees. See  
17 *Evans v. Jeff D.*, 475 U.S. 717, 734-35, 738, n.30 (1980); In *Hensley v. Eckerhart*, 461 U.S. 424,  
18 437 (1983), the Supreme Court held that negotiated, agreed-upon attorneys' fee provisions are the  
19 ideal towards which the parties should strive: "A request for attorney's fees should not result in a  
20 second major litigation. Ideally, of course, litigants will settle the amount of a fee." *Id.*

21 The United States Supreme Court has reemphasized this policy and further stressed that  
22 the trial court "has a responsibility to encourage agreement" on fees. *Blum v. Stenson*, 465 U.S.  
23 886, 902 n.19 (1984). Here, as part of the Settlement, Defendant agreed not to oppose an award of  
24 one-third (1/3) of the Gross Settlement Amount for attorneys' fees. Such a fee is commensurate  
25 with what the market would provide for similar services and the Court therefore can most  
26 certainly enforce the agreement. As the United States Supreme Court has instructed:

27 Given the unique reliance of our legal system on private litigants to enforce  
28 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 Defendant to increase injurious behavior.

*Deposit Guaranty Nat. Bank, supra*, 445 U.S. at 338.

Here, the Settlement is the result of non-collusive, informed, and arm's-length negotiations between experienced counsel for the Class and Defendant with the assistance of Steven Serratore, an experienced wage and hour mediator, over a full day mediation session on February 13, 2024. Later, the case was settled upon a mediator's proposal. (Hawkins Final Decl. ¶ 24). Such bargaining is the best measure of the market for fees. The requested fee and cost award was negotiated during adversarial bargaining at arms' length by counsel for each of the parties, after the substantive terms of the Settlement had been negotiated, and fairly reflects the marketplace value of the services of Class Counsel. As a result, the fee agreed to by the parties should be approved.

#### **IV. CLASS COUNSEL'S FEE AWARD IS PROPERLY CALCULATED AS A PERCENTAGE OF THE TOTAL VALUE CREATED FOR THE BENEFIT OF THE CLASS**

Class Counsel seeks an attorney fee award for their successful prosecution and resolution of this common fund contingent action. In cases such as this one, the Courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits afforded to class members by the settlement. *Laffitte*, 1 Cal. 5th at 494 ("the percentage method has been generally approved in common fund cases"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The awarding of a fee based on a percentage of the common fund recovered is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent, supra*, 557 F.2d at 769. The Gross Settlement Amount is \$2,250,000.00. Accordingly, Class Counsel requests \$787,500 in attorneys' fees as it is properly calculated as a percentage (35%) of the common fund created for the benefit of the Class.

#### **V. In a Common Fund Case, the Supreme Court Approves an Award Based Upon the**

1           **Percentage of the Fund**

2           California courts have been expressly authorized to award attorneys' fees so as "to ensure  
3 that the fee awarded is within the range of fees freely negotiated in the legal marketplace in  
4 comparable litigation." *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at 50. As *Lealao*  
5 explained, in a representative action, courts must consider the amount of attorney fees typically  
6 negotiated in comparable litigation:

7           Given the unique reliance of our legal system on private litigants to enforce  
8 substantive provisions of law through class and derivative actions, attorneys  
9 providing the essential enforcement services must be provided incentives roughly  
10 comparable to those negotiated in the private bargaining that takes place in the legal  
11 marketplace, as it will otherwise be economic for Defendant 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."

12 *Id.* at 47.

13           In this case, the fees are being paid from the common fund. Accordingly, the fee should be  
14 awarded to mimic fees freely negotiated in the legal marketplace for comparable common fund  
15 cases under *Lealao*. As *Lealao* acknowledged, in cases like this one, the percentage-of-the-benefit  
16 approach should be considered because "it better approximates the workings of the marketplace  
17 than the lodestar approach." *Id.*, 82 Cal.App.4th at 49; see also *Apple Computer, Inc. v. Superior*  
18 *Court*, 126 Cal.App.4th 1253, 1270 (2005) (observing that "attorney fees awarded under the  
19 common fund doctrine are based on a 'percentage-of-the-benefit' analysis").

20           In *Laffitte*, the California Supreme Court confirmed that the percentage of the fund  
21 method is properly used in a common fund case:

22  
23           We join the overwhelming majority of federal and state courts in holding that when  
24 class action litigation establishes a monetary fund for the benefit of the class  
25 members, and the trial court in its equitable powers awards class counsel a fee out  
26 of that fund, the court may determine the amount of a reasonable fee by choosing  
27 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  
28 percentage method is a valuable tool that should not be denied our trial courts.

1 *Laffitte*, 1 Cal. 5<sup>th</sup> at 503 (citations omitted). The Supreme Court in *Laffitte* went on to approve the  
2 percentage method for the calculation of the fee award, and affirmed a fee award of one-third  
3 (1/3) of the common fund. *Id.*, at 504. The Court in *Laffitte* indicated that the trial courts may  
4 utilize a “lodestar cross-check” to double check the reasonableness of the percentage fee award.  
5 *Id.* In *Laffitte*, the Supreme Court affirmed the propriety of a lodestar cross-check where the  
6 multiplier exceeded 2. Indeed, the Court explicitly held that the lodestar is a cross check that  
7 should not override the primary use of the percentage method:

8 [W]e emphasize the lodestar calculation, when used in this manner, does not  
9 override the trial court's primary determination of the fee as a percentage of the  
10 common fund and thus does not impose an absolute maximum or minimum on the  
11 potential fee award. A lodestar cross-check is simply a quantitative method for  
12 bringing a measure of the time spent by counsel into the trial court's reasonableness  
13 determination; as such, it is not likely to radically alter the incentives created by a  
14 court's use of the percentage method.

15 *Id.* at 505.

16 Because the Gross Settlement Amount is a pure common fund, and the percentage of the  
17 fund is the comparable marketplace for fee awards in common fund cases, *Laffitte* and *Lealao*  
18 support an award based upon the percentage of the common fund. Here, as noted above, thirty-  
19 five percent is within the reasonable range of comparable awards for common fund cases, which  
20 establishes the requested award as reasonable. Moreover, as discussed below, the use of the  
21 lodestar cross-check in this case further supports the reasonableness of the percentage fee award.

#### 22 **A. The Percentage Fee Award is Supported by a Lodestar Cross-Check**

23 A summary of the rates and hours of Plaintiffs’ counsel are provided in the Declarations of  
24 Class Counsel (Hawkins Final Decl., ¶¶ 52) The reasonableness of the requested attorneys’ fee of  
25 \$787,500 is established by reference to Class Counsel’s lodestar cross-check in this matter. The  
26 lodestar is \$416,847.50, and therefore the requested fee would represent a multiplier of  
27 approximately 1.88 on that billed time. Fee awards are typically approved even when lodestar  
28 multipliers are required. See e.g., *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255  
(2001) ("Multipliers can range from 2 to 4 or even higher."); *Pellegrino v. Robert Half Internat.,*  
*Inc.* (2010) 182 Cal.App.4th 278, at 293; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d  
1043, 1051 and fn. 6 (approving 3.65 multiplier and collecting cases “finding a range of 0.6-19.6,

1 with most (20 of 24, or 83%) from 1.0-4.0 and a bare majority (13 of 24, or 54%) in the 1.5-3.0  
2 range”); *Amaral v. Cintas Corporation No. 2*, 163 Cal. App.4th 1157, 1174 (2008) (approving  
3 lodestar with a 1.65 multiplier in a fee-shifting case); *see also* 4 Newberg on Class Actions § 14.7  
4 (stating that courts typically approve 25% to 33.34% percentage awards with lodestar cross-  
5 checks of 1.9 to 5.1).

6 In a common fund settlement “[t]he lodestar method is merely a cross-check on the  
7 reasonableness of a percentage figure”. *Vizcaino, supra*, 290 F.3d at 1050, n.5. The lodestar cross-  
8 check in the present case strongly supports the reasonableness of the requested fee award as the  
9 lodestar is greater than the requested fee award.

#### 10 **B. Class Counsel’s Hourly Rates Are Reasonable**

11 Reasonable hourly rates are determined by “prevailing market rates in the relevant  
12 community.” *Blum*, 465 U.S. at 895. Typically, the forum where the district court sits is  
13 recognized as the “relevant community.” *Shirrod v. Dir., OWCP*, 809 F.3d 1082, 1087 (9th Cir.  
14 2015) (citing *Christensen v. Stevedoring Servs. of Am.*, 557 F.3d 1049, 1053 (9th Cir. 2009)).  
15 Thus, Plaintiffs’ Counsel is entitled to the hourly rates charged by attorneys of comparable  
16 experience, reputation, and ability for similar litigation. *Blum v. Stenson*, 465 U.S. 886, 895 n.11  
17 (1984); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1133 (2001). *See also Serrano v. Unruh*, 32 Cal. 3d  
18 621, 640 n.31 (1982) (“The formula by which ‘reasonable market value’ is reached is variously  
19 phrased” as “comparable salaries earned by private attorneys with similar experience and  
20 expertise in equivalent litigation,” and the “hourly amount to which attorneys of like skill in the  
21 area would typically be entitled.”) (citations omitted). The reasonableness of Class Counsel’s  
22 rates is confirmed by comparing such rates with the rates of comparable counsel practicing  
23 complex and class litigation. *See LG Corp. v. Huang Xiaowen*, 2017 U.S. Dist. LEXIS 143409  
24 (S.D. Cal. 2017) (finding a rate of \$850 to \$890 an hour for lead counsel reasonable); *see also*  
25 *San Diego Comic Convention v. Dan Farr Prods.*, 2018 U.S. Dist. LEXIS 110391 (S.D. Cal.  
26 2018) (finding rates of \$795 and \$785 an hour reasonable).

27 Class Counsel’s 2024-2025 rates are reasonable and consistent with attorneys of  
28 comparable experience and qualifications in their areas of practice. As demonstrated by their

1 hundreds of successful wage and hour employment law actions, including in this particular area  
2 of law, James Hawkins, APLC is an experienced and highly-skilled law firm with expertise in  
3 representing employees in California wage and hour class actions. (Hawkins Final Decl., ¶¶ 46-  
4 50). Their ability to secure a favorable Settlement for the class in this case despite the many  
5 challenges Plaintiffs faced is a further testament to their expertise.

6 **C. The Percentage Award is Supported by the Results Achieved, the Risks of**  
7 **Litigation, the Skill Required and the Quality of Work, The Contingent**  
8 **Nature of the Fee and the Financial Burden, and Awards in Similar Cases**

9 What has now emerged in most fee award decisions is a recognition that fee  
10 determinations in both common fund and statutory fee situations are incapable of mathematical  
11 precision because of the intangible factors that must be resolved in the court's discretion based on  
12 the circumstances of each particular case. See, A. Conte, *Attorney Fee Awards*, 2nd Ed., 207, at  
13 44. In determining an appropriate fee in a common fund case, a court must decide, based on the  
14 unique posture of each case, what percentage of the common fund would most reasonably  
15 compensate Class Counsel given the nature of the litigation and the performance of counsel. *Paul,*  
16 *Johnson, Alston & Hunt, supra*, 886 F.2d at 272 (the benchmark percentage fee may be adjusted  
17 to account for the circumstances involved in this case.) Courts apply a five-part test in reviewing  
18 a reasonable percentage fee in common fund cases: (1) the results achieved; (2) the risk of  
19 litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and  
20 the financial burden carried by the Plaintiff; and (5) awards made in similar cases.  
21 *In re Omnivision Technologies, Inc.*, 2007 WL 4293467 at \*9 (N.D. Cal. 2007). Here, each of  
22 these five factors strongly support an award of the percentage fee (1/3) requested in this case.

23 **i. The Favorable Result Support Approval.**

24 “The overall result and benefit to the class from the litigation is the most critical factor in  
25 granting a fee award.” *Omnivision*, 2007 WL 4293467 at \*9; See also *In re Heritage Bond Litig.*,  
26 2005 U.S. Dist. LEXIS 13627, at \*27-28 (C.D. Cal. June 10, 2005). Class Counsel obtained a  
27 very favorable result in this case for the Class Members despite facing numerous challenges that  
28 threatened all recovery. The Settlement provides monetary benefits to the Class Members that are

1 comparable to or even exceed those recovered in similar wage and hour class actions. The  
2 Settlement is particularly advantageous to the Class because the proceeds will be distributed  
3 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.

4 There is little question that the result achieved in this litigation is favorable. After all Court-  
5 approved deductions from the GSA, the Net Settlement Amount (“NSA”) of approximately  
6 \$1,276,909.49 will be distributed on a pro rata basis to the Class Members based on the number of  
7 workweeks each Participating Class Member worked during the Class Period. In addition, each  
8 Aggrieved Employee’s share of the remaining PAGA Fund (25% or \$28,125.00) will be distributed  
9 based on the number of individual Aggrieved Employee’s PAGA Pay Periods worked during the  
10 PAGA Period. (Hawkins Decl., Ex. 1, Settlement, Section 3.2.) If the settlement is finally approved  
11 with the requested allocations, the average individual class settlement payment per Class Member  
12 will be \$1,198.98<sup>1</sup> on a net basis and \$2,112.68<sup>2</sup> per Class Member on a gross basis. This amount  
13 compares very favorably to other class action settlements.<sup>3</sup>

14 **ii. The Risks of Litigation and of Losing Were Significant**

15 “The risk that further litigation might result in Plaintiff not recovering at all, particularly a  
16 case involving complicated legal issues, is a significant factor in the award of fees” *Omnivision*,  
17 2007 WL 4293467 at \*9. Defendant’s numerous defenses to the case created difficulties with  
18 proof and complex legal issues for Class Counsel to overcome. Broadly, Defendant’s defenses  
19 included, *inter alia*, that some Class Members signed individual arbitration agreements with  
20 enforceable class action waivers, that this could Court significantly reduce the civil penalties  
21 specified under PAGA, that Plaintiffs’ PAGA claims are unmanageable, that Plaintiffs would  
22 have difficulty certifying their meal period, minimum wage, overtime, and reimbursement claims,  
23

24 <sup>1</sup> \$1,276,909.49 Net Settlement Amount / 1065 Class Members = \$1,198.98.

25 <sup>2</sup> \$2,250,000.00 Gross Settlement Amount / 1065 Class Members = \$2,112.68.

26 <sup>3</sup> See, *Salguero v. Deliv, Inc.*, Case No. 19STCV32534 (Los Angeles County Superior Court, 2021) (\$635,000.00 class  
27 action and PAGA settlement for 3,021 class members with average payment on a gross basis of \$210.20); *Sanderson*  
28 *v. A Bright Future*, Case No. 34-2019-00252816-CU-OE-GDS (Sacramento County Superior Court, 2020)  
(105,000.00 class action and PAGA settlement for 471 class members with an average payment on a gross basis of  
\$222.93); *Ortegon-Ramirez v. Cedar Fair, L.P.*, Case No. 1-13-CV-254098 (Santa Clara County Superior Court, 2015)  
(\$4,750,000.00 class action and PAGA settlement for 31,425 class members with an average payment on a gross basis  
of \$151.15).

1 and that Plaintiffs' derivative wage statement claims are meritless and Plaintiffs would fail to  
2 meet the requisite standards for such penalties. (Hawkins Prelim. Decl. ¶¶ 6-11). Many of the  
3 defenses asserted by Defendant present serious threats to the claims of Plaintiffs and the other  
4 Class Members. (Hawkins Final Decl. ¶¶ 24-30).

5 **iii. The Skill Required and the Quality of Work**

6 Practice in the narrow areas of wage and hour and class action litigation requires skill,  
7 knowledge, and experience in two distinct subsets of the law. Expertise in one does not  
8 necessarily translate into expertise in the other. Class Counsel must have expertise in both. The  
9 issues presented in this case required more than just a general appreciation of wage and hour law  
10 and class action procedure as this area of practice is still developing. This area of law is  
11 potentially worsening for Plaintiff as evidenced by the dicta in *Estrada v. Royalty Carpet Mills,*  
12 *Inc.*, 76, Cal.App.5<sup>th</sup> 685, 706 (2022), which suggests that on-premises rest periods are legal, an  
13 argument that would kill one of Plaintiffs' primary claims, in this case, for on-premises rest  
14 periods alleged to be non-compliant.

15 The Settlement was possible only because Class Counsel was able to convince Defendant  
16 that Plaintiffs could potentially prevail on the difficult legal issues regarding liability, maintain  
17 class certification, overcome difficulties in proof as to monetary relief and take the case to trial.  
18 (Hawkins Final Decl. ¶¶ 26, 54). In successfully navigating these hurdles Class Counsel  
19 displayed the necessary dual skill set. The high quality of the work in this case was mandated by  
20 the very vigorous and contentious defense presented by counsel for Defendant. Class Counsel was  
21 required to invest substantial time and resources in investigation, mediation and settlement, and  
22 preliminary and final approval. (Id. ¶¶ 52-54).

23 The contingent fee practice of Class Counsel does not accommodate the investment of  
24 unnecessary time in a case. This case was litigated on a contingent basis with all of the  
25 concomitant risk factors inherent in such an uncertain undertaking. Moreover, the favorable result  
26 obtained by the settlement further supports the skill and quality of work.

27 **iv. The Contingent Nature of the Fee and the Financial Burden**

28

1       The attorney being paid by the hour can go to the bank with his fee, whereas the attorney  
2 working on a contingent basis can only log hours while working without pay towards a result that  
3 will hopefully entitle him to a marketplace contingent fee. *Powers v. Eichen*, 229 F.3d 1249,  
4 1256-1257 (9th Cir. 2000). In this case, Class Counsel subjected themselves to this contingent fee  
5 market risk in this all or nothing contingent fee case. The necessity and financial burden of private  
6 enforcement makes the requested award appropriate. Counsel working on contingency, whether in  
7 private matters or in class action litigation, are entitled to a premium in order to compensate for  
8 both the risks and the delay in payment. See e.g., *Stanger v. China Elec. Motor, Inc.*, 812 F.3d  
9 734 (9th Cir. 2016) (courts “must” apply a risk service); *Stetson v. Grissom*, 821 F.3d 1157, 1166  
10 (9th Cir. 2016) (abuse of discretion not to apply risk multiplier). The simple fact is that despite the  
11 most vigorous and competent of efforts, success is never guaranteed. *McKittrick v. Gardner*, 378  
12 F.2d 872, 875 (4th Cir. 1967). Class Counsel has invested time and money into contingency cases  
13 which ultimately generated no fee, which further emphasizes the need for contingent cases to  
14 provide premium compensation when successful.

15       Here, the contingent nature of the fee award, both from the point of view of eventual  
16 settlement and the point of view of establishing eligibility for an award, also warrant the  
17 requested fee award. A number of difficult issues, the adverse resolution of any one of which  
18 could have doomed the successful prosecution of the action, were present here.

19       Class Counsel were required to advance all costs in this litigation. In litigation such as this  
20 where a corporate Defendant and their attorneys are well funded, this can prove to be very  
21 expensive and risky. The risk of advancing costs in this type of litigation can be significant, and is  
22 cost prohibitive to many attorneys. The financial burdens undertaken by Class Counsel in  
23 prosecuting this action on behalf of the Class were substantial. Class Counsel has advanced  
24 approximately \$39,540.51 in costs which could not have been recovered if this case had been lost.  
25 (Hawkins Final Decl. ¶ 32). Accordingly, the contingent nature of the fee and the financial  
26 burdens on Class Counsel also support the fee requested.

1                   **v.     Awards in Similar Cases**

2           The attorneys' fees requested by Class Counsel are within the range of fees awarded in  
3 comparable cases. In similar class action cases, Courts have awarded fee requests in the range  
4 from of as much as one-third of the amount obtained. See, *Ortegon-Ramirez v. Cedar Fair, L.P.*,  
5 Case No. 1-13-CV-254098 (Santa Clara County Superior Court, 2015) (awarding attorneys' fees  
6 equal to one-third of \$4,750,000.00 class action and PAGA settlement. A review of class action  
7 settlements over the past 10 years shows that the courts have historically awarded fees in the  
8 range of 20% to 50%, depending upon the circumstances of the case. *In re Warner*  
9 *Communications Sec. Lit.*, 618 F.Supp. 735, 749-50 (S.D. N.Y. 1985). Class Counsels' requested  
10 fees are thirty-five percent of the total value of the case, a percentage well within the range of  
11 reasonableness given the excellent results obtained for the Class, the risks undertaken, and the  
12 skill of the prosecution.

13           In *In re Warner Communications Sec. Lit.*, the Court concluded that percentage fees in  
14 common fund cases range from 20% to 50%. *Id.*, 618 F.Supp. at 749-50. "Usually 50% of the  
15 fund is the upper limit on a reasonable fee award from a common fund in order to assure that the  
16 fees do not consume a disproportionate part of the recovery obtained for the class, although  
17 somewhat larger percentages are not unprecedented." Newberg on Class Actions, 3rd Ed., 14.03.  
18 A fee award of thirty-five percent (35%) of the common fund is therefore reasonable in light of  
19 the prevailing fees that have been awarded in other cases.

20                   **D. Class Counsel's Costs Were Reasonably Incurred**

21           Under the common fund doctrine, the attorneys whose efforts helped to create the fund are  
22 entitled to recover "the costs of . . . [the] litigation" from the fund, in addition to attorneys' fees.  
23 *Vincent v. Hughes Air W., Inc.*, 557 F.2d at 769 (9th Cir. 1977). "In common fund cases, counsel  
24 is entitled to reimbursement of expenses that were adequately documented and reasonably and  
25 appropriately incurred in the prosecution of the case." *Chemi v. Champion Mortg.* No. 05-1238,  
26 2009 WL 1470429 (D.N.J. May 26, 2009); see *In re Omnivision*, 559 F.Supp.2d at 1048-49  
27 (awarding payment for reimbursement of expenses, plus interest from settlement fund; discussing  
28 that attorneys may recover reasonable expenses that would typically be billed to paying clients in

1 non-contingency matters, including expenses for photocopying, printing, postage, messenger  
2 services, legal research in electronic databases, experts and consultants, and travel costs).

3 Class Counsel requests reimbursement for actual expenses and costs in the amount of  
4 \$39,540.51, which are detailed in the Declarations of Class Counsel in Support of Final Approval.  
5 (Hawkins Final Decl. ¶ 55).<sup>4</sup> These expenses primarily consist of fees for filing, mediation, and  
6 court call, and were reasonably incurred in the prosecution of this matter. (Id.).

7 **E. The Class Representatives Should Receive the Requested Service Payments**

8 Plaintiffs Sovatana Saut and John Nakatani respectfully submit that for their service as the  
9 Class Representatives, they should be awarded Class Representative Service Payments in the  
10 amount of \$10,000.00. Defendant does not oppose this award and no Class Member has objected  
11 to this award.

12 The service award is intended to recognize the time, effort, and risk that Plaintiffs  
13 undertook in bringing this case and helping to secure the relief obtained for the members of the  
14 Class. *See Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding “service  
15 payment” to named Plaintiff for their efforts in bringing the class case); *Rodriguez v. West*  
16 *Publishing*, 563 F.3d 948, 959 (9th Cir. 2009) (stating that incentive awards are “intended to  
17 compensate class representatives for work done on behalf of the class, to make up for financial or  
18 reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness  
19 to act as a private attorney general.”).

20 In addition, public policy considerations require the award of adequate service payments  
21 reflective of the risks and efforts undertaken by class representatives. “Many courts have noted a  
22 fourth rationale for incentive payments: that such payments do precisely what their name hopes  
23 they will—incentivize class members to step forward on behalf of the class.” Newberg on Class  
24 Actions § 17:3 (5th ed.) § 17:3.

25 Plaintiffs have performed admirably as the Class Representatives. Plaintiffs provided  
26 valuable information and documents from their employment which was instrumental in Class  
27

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28 <sup>4</sup> Though this Court preliminarily approved costs up to \$50,000 in its December 5, 2024 order, Class Counsel respectfully requests an award of actual costs incurred in this litigation of \$39,540.51.

1 Counsel’s understanding of the case and our ability to successfully litigate and mediate. Both  
2 Plaintiffs prepared for and had their depositions taken. Plaintiffs were involved in the settlement  
3 negotiations and provided invaluable assistance and information which ultimately resulted in this  
4 Settlement. (Hawkins Final Decl. ¶ 36; Declarations of Sovatana Saut and John Hisato Nakatani  
5 in Support of Preliminary Approval and in Support of Final Approval, generally). Plaintiffs also  
6 assumed the risks that they may be liable for costs incurred in this case, and that they may be  
7 “blacklisted” by future employers for having brought this action.

8 A service payment made to a successful class representative is appropriate and the amount  
9 of \$10,000.00 as service payment to Plaintiffs is less than 1% of the Gross Settlement Amount  
10 secured on behalf of the Class. Further, the service award is comparable to those awarded in other  
11 class actions. *See e.g. Cellphone Termination Fee Cases*, 186 Cal.App.4<sup>th</sup> at 1381 (Cal.App. June  
12 28, 2010) (affirming \$10,000 incentive awards to Plaintiffs in class action where average recovery  
13 per class member was only \$81); *Nakagaki v. Proven Staffing Consultants LLC*, San Diego  
14 County Superior Court, Case No. 37-2022-00026848-CU-OE-CTL (April 21, 2023) (approving  
15 \$6,500 service award on \$81,000 settlement); *Carrillo v. SGS North America, Inc.* LASC No.  
16 BC560240, Order Granting Final Approval, Dec. 20, 2016 (\$15,000 service payment in a  
17 \$400,000 claims-made settlement for 52 employees); *Valladares v. The Sygma Network, Inc.*,  
18 LASC No. BC406053, Order Granting Final Approval, Apr 6, 2010 (\$10,000 service payment in a  
19 maximum \$1,195,000 claims-made settlement for 326 employees).

20 By bringing this case Plaintiffs secured a total settlement of \$2,250,000.00 for 1,065 Class  
21 Members. Plaintiffs spent considerable time and effort, and undertook significant risks in bringing  
22 this action. Accordingly, Class Counsel respectfully requests that the Court approve the requested  
23 Class Representative Service Payments.

## 24 VI. CONCLUSION

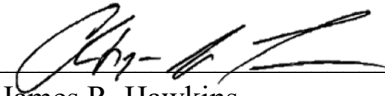
25 The services provided by Class Counsel have been wholly contingent, and the requested  
26 fee is reasonableness compared to fee requests approved by courts given the efforts expended in  
27 this case and the stage of proceedings at the time of settlement. Class Counsel undertook great  
28 risk on and achieved a favorable result for the benefit of Class Members. Based on the foregoing,

1 Class Counsel respectfully requests approval of the application for award of attorneys' fees of  
2 \$787,500, reimbursement of actual litigations costs of \$39,540.51, totaling \$827,040.51, and  
3 Class Representative Service Payments of \$10,000.00 to Plaintiff Sovatana Saut and Plaintiff  
4 John Nakatani.

5  
6 Dated: April 18, 2025

Respectfully Submitted

7 **JAMES HAWKINS, APLC**

8  
9 By:  \_\_\_\_\_

10 James R. Hawkins

Christina M. Lucio

11 Nicholas Schieffelin

12 Attorneys for Plaintiffs  
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