

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Miriam L. Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff Victor De La Cruz and the Class

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

VICTOR DE LA CRUZ, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

NORTHWEST PIPE COMPANY, an Oregon
corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No. CIVSB2211140

Honorable Joseph T. Ortiz
Department S17

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT, ATTORNEYS'
FEES AND COSTS, ENHANCEMENT
PAYMENT, AND SETTLEMENT
ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: September 18, 2024
Time: 1:30 p.m.
Dept: S17

Complaint Filed: May 25, 2022
FAC Filed: February 2, 2023
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on **September 18, 2024 at 1:30 p.m.** in Department S17
3 of the above-captioned Court located at 247 West Third Street, San Bernardino, California 92415,
4 pursuant to California Code of Civil Procedure section 382, Rule 3.769 of the California Rules of
5 Court, and California Labor Code section 2699(1), Plaintiff Victor De La Cruz (“Plaintiff”) will and
6 hereby does move the Court for an Order granting final approval of the proposed class action and
7 Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.*
8 (“PAGA”) settlement between Plaintiff and Defendant Northwest Pipe Company (“Defendant”).

9 Plaintiff requests that the Court enter an Order:

- 10 1. Granting final approval of the class action and PAGA settlement;
- 11 2. Approving the settlement as fair, adequate, and reasonable, based upon the terms as set
12 forth in the Court-approved Joint Stipulation of Class Action and PAGA Settlement (“Settlement
13 Agreement” or “Settlement”), including payment by Defendant of the Gross Settlement Amount of
14 Six Hundred Fifty-One Thousand Dollars and Zero Cents (\$651,000.00) equal to the amounts to pay
15 (1) the Settlement Class Members and PAGA Employees pursuant to the terms of the Settlement; (2)
16 the Court-approved Attorneys’ Fees and Costs; (3) the Court-approved Enhancement Payment; (4) the
17 Court-approved Settlement Administration Costs; and (5) the Court-approved payment to the
18 California Labor and Workforce Development Agency (“LWDA”) pursuant to PAGA;
- 19 3. Approving Class Counsel’s request for one-third (1/3) of the Gross Settlement Amount,
20 i.e., Two Hundred Seventeen Thousand Dollars and Zero Cents (\$217,000.00) in attorneys’ fees, plus
21 reimbursement of actual costs and expenses in the amount of Seventeen Thousand Five Hundred
22 Seventeen Dollars and Four Cents (\$17,517.04);
- 23 4. Approving the Enhancement Payment to Plaintiff in the amount of Seven Thousand
24 Five Hundred Dollars and Zero Cents (\$7,500.00) in recognition of his services to the Class Members;
- 25 5. Approving the Settlement Administration Costs to Apex Class Action LLC in the
26 amount of Eight Thousand Five Hundred Dollars and Zero Cents (\$8,500.00); and

27 ///

28 ///

6. Approving Thirty Thousand Dollars and Zero Cents (\$30,000.00) to be paid to the LWDA as seventy-five percent (75%) of the Forty Thousand Dollars and Zero Cents (\$40,000.00) 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 Miriam L. Schimmel), the Class Representative (Victor De La Cruz), 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: August 26, 2024

BLACKSTONE LAW, APC

By:

Jonathan M. Genish
Miriam L. Schimmel
Attorneys for Plaintiff Victor De La Cruz
and the Class

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....	3
III.	SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION.....	6
V.	COMPLIANCE WITH PROCEDURAL REQUIREMENTS OF PAGA.....	12
VI.	EVALUATION OF SETTLEMENT FOR FINAL APPROVAL	12
	A. The Legal Standard for Final Approval	12
	B. The Settlement Should be Finally Approved.....	12
	C. The Settlement is Fair and Reasonable.....	13
VII.	THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE AND SHOULD BE APPROVED	15
	A. Plaintiff's Fee Request of One-Third (1/3) of the Gross Settlement Amount.....	15
	is Proper Under the Common Fund Doctrine	15
	B. The Circumstances of this Case Support a One-Third (1/3) Fee Award	18
	C. The Contingent Nature of This Matter	18
	D. The Experience, Reputation, Ability of Counsel, and Skill in Litigation	19
	E. The Results Achieved.....	19
	F. Preclusion of Other Employment	20
	G. The Requested Fees Are Also Justified Under the Lodestar Method	20
	H. No Class Member Objected to the Requested Attorneys' Fee Award	23
	I. Plaintiff's Cost Request is Reasonable	23
VIII.	THE REQUESTED ENHANCEMENT PAYMENT TO PLAINTIFF IS REASONABLE	23
IX.	THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE	25
X.	THE PROPOSED LWDA ALLOCATION IS REASONABLE	25
XI.	THE CLASS RECEIVED THE BEST PRACTICABLE NOTICE.....	26
XII.	CONCLUSION.....	27

TABLE OF AUTHORITIES

Cases

<i>Bank of America v. Cory</i> (1985) 164 Cal.App.3d 66, 89-92.....	17
<i>Boeing Co. v. Van Gernert</i> (1980) 444 U.S. 472,478	16
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960, 973-74.....	26
<i>Ceja-Corona v. CVS Pharm., Inc.</i> (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500,.....	25
<i>Chu v. Wells Fargo Invs., LLC</i> (N.D. Cal. Feb. 16, 2011) 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645.....	26
<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal.4 th 105, 110-111	17
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009)	12
<i>Clark v. American Residential Services LLC</i> (2009) 175 Cal.App.4th 785, 804.....	24
<i>Cook v. Niedert</i> , 142 F.3d 1004, 1016 (7 th Cir. 1998)	23
<i>D’Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1	16
<i>Dunk v. Ford Motor Company</i> (1996) 48 Cal.App.4th 1794, 180 1.....	2, 12
<i>Eisen v. Carlisle & Jacquelin</i> (1974) 417 U.S. 156, 174-76	26
<i>Franco v. Ruiz Food Prods.</i> (E.D. Cal. Nov. 27, 2012) 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801.....	26
<i>Garcia v. Gordon Trucking, Inc.</i> (E.D. Cal. Oct. 31, 2012) 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575.....	26
<i>Glendale City Employees ‘ Association v. City of Glendale</i> (1975) 15 Cal.3d 328, 341 fn.19	16
<i>In re Activision Sec. Litig.</i> (N.D. Cal 1989) 723 F. Supp. 1373, 1375.)	17
<i>In re Activision Sec. Litig.</i> , 723 F. Supp. at 1378-79.	17, 18
<i>In re Pac. Enters. Sec. Litig.</i> (9th Cir. 1995) 47 F.3d 373, 378-79	18
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1138	22
<i>Knoff v. City and County of San Francisco</i> (1969) 1 Cal.App.3d 184, 203-204	17
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	14
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116, 129-30.....	1

1	<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19, 31 n.5.....	17, 18
2	<i>Lealao</i> , 82 Cal.App.4th at 47-48.....	22
3	<i>Magadia v. Wal-Mart Assocs.</i> (N.D. Cal. May 31, 2019, No. 17-CV-00062-LHK) 2019 U.S. Dist.	
4	LEXIS 91732	25
5	<i>Mills v. Electric Auto-Lite Co.</i> (1970) 396 U.S. 375, 391-392	16
6	<i>Mullane v. Central Hanover Bank & Garretson Company</i> (1950) 339 U.S. 306, 314.....	26
7	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399, 412.....	23
8	<i>Officers for Justice v. Civil Serv. Comm’n</i> (9th Cir. 1982) 688 F.2d 615, 625.)	12
9	<i>Parker v. Los Angeles</i> (1974) 44 Cal.App.3d 556, 567-568	17
10	<i>Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.</i> (E.D. Pa. 1970)	
11	323 F. Supp. 364, 378.	26
12	<i>Phillips Petroleum Co. v. Shutts</i> (1985) 472 U.S. 797, 811-12	26
13	<i>Quinn v. State of California</i> (1995) 15 Cal.3d 162, 16 7	16, 17
14	<i>Rider v. County of San Diego</i> (1992) 1 I Cal.App.4th 1410, 1423	17
15	<i>Serrano v. Priest</i> (“ <i>Serrano III</i> ”) (1977) 20 Cal.3d 25, 34	15, 16
16	<i>Serrano v. Priest</i> (1982) 32 Cal. 3d 621, 639 (“ <i>Serrano IV</i> ”).....	21
17	<i>Staton v. Boeing Co.</i> (9th Cir. 2003) 327 F.3d 938, 977.	24
18	<i>Thio v. Genji, LLC</i> (N.D. Cal. 2014) 14 F. Supp. 3d 1324, 1330	26
19	<i>Thornton v. East Texas Motor Freight</i> , 497 F.2d 416, 420 (6 th Cir. 1974).....	23
20	<i>Van Vranken v. Atlantic Ricliffeld Co.</i> (N.D. Cal. 1995) 901 F. Supp. 294, 299.....	2, 24
21	<i>Webb v. Board of Educ.</i> (1985) 471 U.S. 234.....	21
22	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224, 244-45.....	12
23	<i>Wininger v. SI Mgmt. L.P.</i> (9th Cir. 2002) 301 F.3d 1115.)	17
24	Statutes	
25	California Civil Code § 1781	26
26	California Code of Civil Procedure section 382	i
27	Labor Code Section 2699(1)	25
28	Other Authorities	

1	California Practice Guide: Civil Trials and Evidence (The Rutter Group) at§ 17:172.3	16
2	<i>Newberg on Class Actions</i>	21
3	Newberg on Class Actions (4th Ed.), §14.6.....	18
4	<i>Newberg on Class Actions</i> 4th (4th ed. 2002) § 14.6.....	21
5	Rules	
6	Cal. Rules of Court, rule 3.769(g).....	12

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Victor De La Cruz (“Plaintiff” or “Class Representative”) seeks final approval of the
4 class action settlement reached with Defendant Northwest Pipe Company (“Defendant”). Subject to
5 Court approval, Plaintiff and Defendant (together, the “Parties”) have settled the Released Class
6 Claims and Released PAGA Claims as defined in the Joint Stipulation of Class Action and PAGA
7 Settlement (“Settlement Agreement” or “Settlement”) for a total amount of Six Hundred Fifty-One
8 Thousand Dollars and Zero Cents (\$651,000.00) (“Gross Settlement Amount”). (*See* Declaration of
9 Jonathan M. Genish in Support of Plaintiff’s Motion for Final Approval of Class Action and PAGA
10 Settlement, Attorneys’ Fees and Costs, Enhancement Payment, and Settlement Administration Costs
11 [“Genish Decl.”], ¶ 29, Exh. 1).

12 The Court conditionally certified, for settlement purposes only, the Class defined as: “All
13 current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State
14 of California at any time during the Class Period. This shall include both individuals employed
15 pursuant to a collective bargaining agreement and individuals not employed pursuant to a collective
16 bargaining agreement” (“Class” or “Class Members”). (Settlement Agreement, ¶ 6.b; Genish Decl., ¶
17 27). The “Class Period” is defined as the period from May 25, 2018 through July 17, 2023.
18 (Settlement Agreement, ¶ 6.f; Genish Decl., ¶ 27). The “Settlement Class Members” consist of all
19 Class Members who did not submit a timely and valid Request for Exclusion. (Settlement Agreement,
20 ¶ 6.1l; Genish Decl., ¶ 27). The “PAGA Employees” consist of “all current and former hourly-paid
21 and/or non-exempt employees who worked for Defendant in the State of California at any time during
22 the PAGA Period. This shall include both individuals employed pursuant to a collective bargaining
23 agreement and individuals not employed pursuant to a collective bargaining agreement.” (Settlement
24 Agreement, ¶ 6.x; Genish Decl., ¶ 27). The “PAGA Period” is defined as the period from May 25,
25 2021 through July 17, 2023. (Settlement Agreement, ¶ 6.z; Genish Decl., ¶ 27).

26 As discussed herein, the proposed Settlement satisfies all the criteria for final settlement
27 approval under California law because it is fair, adequate, and reasonable. (Genish Decl., Exh. 1; *See*
28 *also, Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor*

1 *Company* (1996) 48 Cal.App.4th 1794, 180 l). The response of the Class to the Settlement confirms
2 that final settlement approval is appropriate. *There have been no objections to and no requests to opt-*
3 *out from the Class Settlement.* (Declaration of Madely Nava of Apex Class Action LLC Regarding
4 Notice and Settlement Administration [“Nava Decl.”], ¶¶ 9 & 10).

5 Because the Settlement achieves outstanding results for the Settlement Class Members, the
6 PAGA Employees, and the State of California, Plaintiff respectfully requests, on behalf of the Class
7 and without opposition from Defendant, that the Court approve the Settlement as fair, adequate, and
8 reasonable, and enter judgment in accordance with the Settlement’s terms.

9 Plaintiff seeks the Court’s approval of an attorneys’ fee award of one-third (1/3) of the Gross
10 Settlement Amount, equaling Two Hundred Seventeen Thousand Dollars and Zero Cents
11 (\$217,000.00), plus reimbursement of Seventeen Thousand Five Hundred Seventeen Dollars and Four
12 Cents (\$17,517.04) in actual litigation costs and expenses (together, “Attorneys’ Fees and Costs”).
13 Class Counsel’s request for an award of attorneys’ fees and costs is reasonable and appropriate in light
14 of the outstanding work performed by Class Counsel in the matter, the contingent nature of this action,
15 and the results achieved under the Settlement. (*See Lealao v. Beneficial California, Inc.* (2000) 82
16 Cal.App.4th 19).

17 Plaintiff also requests the Court to confirm the amount agreed to be paid to Plaintiff in the
18 amount of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) (“Enhancement
19 Payment”) for his services on behalf of the Class. This amount proposed to be awarded to Plaintiff is
20 fair and reasonable for the reasons Plaintiff provided in his declaration. (*See Declaration of Plaintiff*
21 *Victor De La Cruz in Support of Motion for Final Approval of Class Action and PAGA Settlement,*
22 *Attorneys’ Fees and Costs, Enhancement Payment, and Settlement Administration Costs* [“De La Cruz
23 Decl.”] filed concurrently herewith). Courts approve incentive awards to plaintiffs when justified and
24 appropriate to compensate plaintiffs for their time, effort, and inconvenience. (*See e.g., Van Vranken*
25 *v. Atlantic Ricliff Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299).

26 Finally, Plaintiff requests that the Court approve the payment of Eight Thousand Five Hundred
27 Dollars and Zero Cents (\$8,500.00) (“Settlement Administration Costs”) to Apex Class Action LLC
28 (“Apex” or “Settlement Administrator”) as compensation for its administration services it has and will

1 provide in connection with the Settlement. (*See, generally*, Nava Decl.).

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

7 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

8 Defendant is a steel water pipe systems manufacturer. Plaintiff was employed by Defendant
9 as an hourly-paid, non-exempt Laborer II from approximately December 2021 to approximately
10 February 2022. (De La Cruz Decl., ¶ 2).

11 On May 25, 2022, Plaintiff provided written notice to the California Labor and Workforce
12 Development Agency ("LWDA") by online submission and to Defendant by U.S. Certified Mail,
13 pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor
14 Code alleged to have been violated by Defendant ("PAGA Letter"). (Genish Decl., ¶ 9).

15 On May 25, 2022, Plaintiff filed a Class Action Complaint for Damages in the action entitled
16 *Victor De La Cruz v. Northwest Pipe Company*, San Bernardino County Superior Court Case No.
17 CIVSB2211140 ("Action"), thereby commencing a putative class action against Defendant. (*Id.*, ¶
18 10).

19 On October 27, 2022, Plaintiff propounded written formal discovery onto Defendant
20 (specifically, Form Interrogatories – General (Set One), Special Interrogatories (Set One), Requests
21 for Admission (Set One), and Requests for Production of Documents (Set One)). (*Id.*, ¶ 11).

22 On November 7, 2022, Defendant propounded written formal discovery onto Plaintiff
23 (specifically, Form Interrogatories – General (Set One), Form Interrogatories – Employment (Set
24 One), Special Interrogatories (Set One), Requests for Admission (Set One), and Request for
25 Production of Documents (Set One)). (*Id.*, ¶ 12).

26 On November 8, 2022, Plaintiff served a notice of deposition of Defendant's Person Most
27 Knowledgeable along with request for production of documents. (*Id.*, ¶ 13).

28 ///

1 On February 2, 2023, Plaintiff filed a First Amended Class Action Complaint for Damages
2 and Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698,
3 *Et Seq.* (“Operative Complaint”) in the Action, which added a cause of action under PAGA. (*Id.*, ¶
4 14).

5 On July 21, 2023, Plaintiff propounded additional written formal discovery onto Defendant
6 (specifically, Special Interrogatories (Set Two) and Requests for Production of Documents (Set Two))
7 and served an amended notice of deposition of Defendant’s Person Most Knowledgeable along with
8 request for production of documents and a proposed Belaire-West notice. (*Id.*, ¶ 15). On August 21,
9 2023, Plaintiff served a second amended notice of deposition of Defendant’s Person Most
10 Knowledgeable along with request for production of documents. (*Ibid.*). On September 5, 2023,
11 Plaintiff served a third amended notice of deposition of Defendant’s Person Most Knowledgeable
12 along with request for production of documents. (*Ibid.*). On September 18, 2023, Plaintiff served a
13 fourth amended notice of deposition of Defendant’s Person Most Knowledgeable along with request
14 for production of documents. (*Ibid.*).

15 On September 26, 2023, Plaintiff served responses to Defendant’s discovery requests
16 (specifically, Form Interrogatories – General (Set One), Form Interrogatories – Employment (Set
17 One), Special Interrogatories (Set One), Requests for Admission (Set One), and Request for
18 Production of Documents (Set One)). (*Id.*, ¶ 16).

19 On September 26, 2023, Defendant served responses to Plaintiff’s discovery requests
20 (specifically, Form Interrogatories – General (Set One), Special Interrogatories (Sets One and Two),
21 Requests for Admission (Set One), and Requests for Production of Documents (Sets One and Two))
22 along with a production of documents. (*Id.*, ¶ 17). On October 11, 2023, Defendant noticed the
23 deposition of Plaintiff and served a production of documents in response to Plaintiff’s discovery
24 requests. (*Ibid.*). On October 12, 2023, Defendant served a response and objections to Plaintiff’s
25 fourth amended notice of deposition. (*Ibid.*).

26 On October 18, 2023, Blackstone Law, APC took the deposition of Defendant’s Person Most
27 Knowledgeable (Vice President of Human Resources). (*Id.*, ¶ 18).

28 ///

1 On October 31, 2023, a Belaire-West notice was mailed to three hundred and fifty-six (356)
2 putative class members by a third-party administrator. (Genish Decl., ¶ 19). Thirteen (13) putative
3 class members timely opted out by the response deadline. (Ibid).

4 On November 9, 2023, Blackstone Law, APC defended the deposition of Plaintiff. (*Id.*, ¶ 20).

5 On November 15, 2023, Plaintiff propounded additional written formal discovery onto
6 Defendant (specifically, Requests for Production of Documents (Set Three)). (*Id.*, ¶ 21).

7 On November 17, 2023, Defendant served a notice of continued deposition of Plaintiff. (*Id.*,
8 ¶ 22).

9 The Operative Complaint alleges nine (9) causes of action for violations of the California
10 Labor Code for failure to pay overtime wages, failure to pay minimum wages, failure to provide
11 compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest
12 periods and premiums payments in lieu thereof, failure to provide accurate wage statements, failure
13 to timely pay wages upon termination, and failure to reimburse necessary business expenses, for
14 violations of California Business & Professions Code Section 17200, *et seq.* based on the
15 aforementioned California Labor Code violations, and for civil penalties under PAGA based on the
16 aforementioned California Labor Code violations. (*Id.*, ¶ 23).

17 On July 17, 2023, the Parties participated in a formal mediation conducted by Todd Smith,
18 Esq. (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and
19 hour matters, which did not result in a settlement at that time. (*Id.*, ¶ 24). After continued negotiations,
20 and with the assistance of the Mediator, the Parties were able to reach an agreement to resolve this
21 dispute on a class and representative basis, and shortly thereafter executed a memorandum of
22 understanding memorializing the key settlement terms. (Ibid). The Parties worked diligently to
23 negotiate and memorialize the terms in a long form settlement agreement. (Ibid).

24 On March 13, 2024, the Parties executed the Settlement Agreement. (*Id.*, ¶ 25 & Exh. 1).

25 On March 15, 2024, Plaintiff submitted for filing the Motion for Preliminary Approval of Class
26 Action and PAGA Settlement (“Motion for Preliminary Approval”) and supporting documents, which
27 were deemed filed on March 18, 2024. (*Id.*, ¶ 26). On June 5, 2024, the Court entered the Order
28 Granting Preliminary Approval of Class Action and PAGA 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.*, ¶ 26 & Exh. 2).

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.

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 Action for a non-reversionary Gross Settlement Amount of Six Hundred Fifty-One Thousand Dollars and Zero Cents (\$651,000.00), which is exclusive of employer-side payroll taxes. (Settlement Agreement, ¶ 6.p; Genish Decl., ¶ 29). The Gross Settlement Amount includes: (1) Class Counsel’s fees in the amount of one-third (1/3) of the Gross Settlement Amount, equaling Two Hundred Seventeen Thousand Dollars and Zero Cents (\$217,000.00); (2) Class Counsel’s actual litigation costs and expenses, in the amount of Seventeen Thousand Five Hundred Seventeen Dollars and Four Cents (\$17,517.04); (3) Settlement Administration Costs in the amount of Eight Thousand Five Hundred Dollars and Zero Cents (\$8,500.00); (4) Enhancement Payment in the amount of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00); and (5) PAGA Amount in the amount of Forty Thousand Dollars and Zero Cents (\$40,000.00). (Settlement Agreement, ¶¶ 9, 10, 11, & 12; Genish Decl., ¶ 29). After the above Court-approved amounts are deducted from the Gross Settlement Amount, the Participating Class Members will share in a Net Settlement Amount of approximately Three Hundred Sixty Thousand Four Hundred Eighty-Two Dollars and Ninety-Six Cents (\$360,482.96). (Settlement Agreement, ¶ 6.u; Genish Decl., ¶ 29).

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 Employees to submit claims as a prerequisite to receiving their *pro rata* share

1 of twenty-five percent (25%) of the PAGA Amount (“Individual PAGA Payment”). (Settlement
2 Agreement, ¶¶ 6.q, 6.s, & 34; Genish Decl., ¶ 40). Individual Settlement Shares are calculated by the
3 Settlement Administrator by dividing the Net Settlement Amount by the number of weeks each
4 Settlement Class Member worked for Defendant as an hourly-paid and/or non-exempt employee in
5 California during the Class Period (“Workweeks”) to yield the “Final Workweek Value,” and
6 multiplying each Settlement Class Member’s individual Workweeks by the Final Workweek Value.
7 (Settlement Agreement, ¶¶ 6.mm & 14.b; Genish Decl., ¶ 30). Individual PAGA Payments are
8 calculated by the Settlement Administrator by dividing twenty-five percent (25%) of the PAGA
9 Amount (\$10,000.00) (“PAGA Employee Amount”) by the number of weeks each PAGA Employee
10 worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA
11 Period (“PAGA Workweeks”) to yield the “PAGA Workweek Value,” and multiplying each PAGA
12 Employee’s individual PAGA Workweeks by the PAGA Workweek Value. (Settlement Agreement,
13 ¶¶ 6.bb & 15; Genish Decl., ¶ 30)

14 Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty
15 percent (80%) penalties, interest, and non-wage damages. (Settlement Agreement, ¶ 16; Genish Decl.,
16 ¶ 32). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated
17 to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by
18 the Settlement Administrator. (Settlement Agreement, ¶ 16; Genish Decl., ¶ 32). The Settlement
19 Administrator will withhold the employee’s share of taxes and withholdings with respect to the wages
20 portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their
21 net payment of their Individual Settlement Share (“Individual Settlement Payment”). (Settlement
22 Agreement, ¶¶ 6.r & 16; Genish Decl., ¶ 32). The employer’s share of taxes and contributions in
23 connection with the wages portion of Individual Settlement Shares will be paid separately and in
24 addition to the Gross Settlement Amount. (Settlement Agreement, ¶¶ 6.k, 6.p, & 16; Genish Decl., ¶
25 32). Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and
26 will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Settlement
27 Agreement, ¶ 16; Genish Decl., ¶ 32).

28 ///

1 Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
2 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
3 thereafter, shall be canceled. (Settlement Agreement, ¶ 34; Genish Decl., ¶ 33). Any funds associated
4 with such canceled checks will be distributed by the Settlement Administrator to the State of
5 California's Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA
6 Employee. (Settlement Agreement, ¶ 34; Genish Decl., ¶ 33).

7 Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class
8 Members will be deemed to have fully, finally, and forever released, settled, compromised,
9 relinquished, and discharged the Released Parties of any and all claims, debts, liabilities, demands,
10 obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action which were
11 alleged or which could have been alleged based on the factual allegations in the Operative Complaint,
12 arising during the Class Period, under any federal, state, or local law, and shall specifically include
13 claims for Defendant's alleged failure to pay overtime and minimum wages, provide compliant meal
14 and rest periods and associated premium payments, timely pay wages upon termination, provide
15 accurate wage statements, and reimburse necessary business-related expenses in violation of
16 California Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800,
17 and 2802, and Industrial Welfare Commission Wage Orders, and all claims for attorneys' fees and
18 costs and statutory interest in connection therewith, California Business and Professions Code sections
19 17200, *et seq.*, and any other claims, including claims for statutory penalties, pertaining to the Class
20 Members (collectively, "Released Class Claims"). (Settlement Agreement, ¶¶ 6.ee & 35)

21 Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with
22 respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and
23 forever released, settled, compromised, relinquished, and discharged the Released Parties of any and
24 all claims arising from any of the factual allegations in the Operative Complaint and PAGA Letter,
25 arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004,
26 California Labor Code sections 2698 *et seq.*, including all claims for attorneys' fees and costs related
27 thereto, for Defendant's alleged failure to pay overtime and minimum wages, provide compliant meal
28 and rest periods and associated premium payments, timely pay wages during employment and upon

1 termination, provide complaint wage statements, maintain complete and accurate payroll records, and
2 reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203,
3 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial
4 Welfare Commission Wage Orders, including *inter alia*, Wage Order 16-2001 (collectively, “Released
5 PAGA Claims”). (Settlement Agreement, ¶¶ 36 & 6.ff)

6 Upon the full funding of the Gross Settlement Amount, Plaintiff, individually and on his own
7 behalf, will be deemed to have fully, finally, and forever released, settled, compromised, relinquished,
8 and discharged the Released Parties from any and all claims, debts, liabilities, demands, obligations,
9 guarantees, costs, expenses, attorneys’ fees, damages, or causes of action of any kind or nature
10 whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, which Plaintiff, at
11 any time of execution of the Settlement Agreement, had or claimed to have or may have, including
12 but not limited to any and all claims arising out of, relating to, or resulting from his employment and/or
13 separation of employment with the Released Parties, including any claims arising under any federal,
14 state, or local law, statute, ordinance, rule, or regulation or Executive Order relating to employment,
15 including, but in no way limited to, any claim under Title VII of the Civil Rights Act of 1964, as
16 amended (“Title VII”), 42 U.S.C. § 1981; the Americans with Disabilities Act (“ADA”); the Family
17 and Medical Leave Act (“FMLA”); the Employee Retirement Income Security Act (“ERISA”); the
18 California Family Rights Act (“CFRA”); the California Fair Employment and Housing Act (“FEHA”);
19 all claims for wages or penalties under the Fair Labor Standards Act (“FLSA”); all claims for wages
20 or penalties under the California Labor Code; Business and Professions Code sections 17200 *et seq.*;
21 all laws relating to violation of public policy, retaliation, or interference with legal rights; any and all
22 other employment or discrimination laws; whistleblower claims; any tort, fraud, or constitutional
23 claims; and any breach of contract claims or claims of promissory estoppel. (*Id.*, ¶ 37). It is agreed
24 that this is a general release and is to be broadly construed as a release of all claims, provided that,
25 notwithstanding the foregoing, this Paragraph expressly does not include a release of any claims that
26 cannot be released hereunder by law. (*Ibid.*). Plaintiff understands and expressly agrees that the
27 Settlement Agreement extends to claims that he has against Defendant, of whatever nature and kind,
28 known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising

1 from or attributable to an incident or event, occurring in whole or in part, on or before the execution
2 of the Settlement Agreement. (Settlement Agreement, ¶ 37). Any and all rights granted under any
3 state or federal law or regulation limiting the effect of the Settlement Agreement, including the
4 provisions of Section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED.

5 Section 1542 of the California Civil Code reads as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
7 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
8 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
9 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
10 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
11 PARTY.
12 (Ibid).

13 The “Released Parties” means Defendant and its current and former officers, directors,
14 management-level employees, members, insurers, shareholders, subsidiaries, affiliates, predecessors,
15 successors, and assigns. (*Id.*, ¶ 6.gg).

16 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

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

19 On June 5, 2024, Class Counsel provided Apex with the Court-approved content for the Class
20 Notice. (Nava Decl., ¶ 4). Apex then generated a draft of the formatted Class Notice, which received
21 approval from the Parties’ counsel before being mailed. (Ibid).

22 On June 20, 2024, Defendant’s Counsel provided Apex with the Class List, comprising the full
23 names, Social Security numbers, last known mailing addresses, and the dates worked for Defendant
24 during the Class Period of each Class Member. (Nava Decl., ¶ 5; Settlement Agreement, ¶ 6.p). The
25 Class List was successfully uploaded to Apex’s database, where it underwent a thorough review to
26 identify any duplicates or potential inconsistencies. (Ibid). The Class List consisted of a total of 345
27 individuals identified as Class Members. (Ibid).

28 In preparation for the mailing process, all 345 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.*, ¶ 6). The purpose of this step was to
ensure the accuracy and validity of the Class Members’ mailing addresses before sending out the Class

1 Notice. (Nava Decl., ¶ 6). The NCOA database contains records of requested address changes
2 submitted to the USPS. (Ibid). If an updated address was found in the NCOA database, it was utilized
3 for the mailing of the Class Notice. (Ibid). However, in cases where no updated address was found
4 in the NCOA database, the original address provided by Defendant’s Counsel was used for the mailing
5 of the Class Notice. (Ibid).

6 On June 26, 2024, the Class Notice was mailed to all 345 individuals listed in the Class List
7 using U.S First Class Mail. (*Id.*, ¶ 7). Apex received 22 returned Class Notices as undeliverable. (*Id.*,
8 ¶ 8). Of the 22 returned Class Notices, none were returned with a forwarding address. (Ibid).
9 Therefore, Apex conducted a computerized skip trace on the 22 returned Class Notices in order to
10 acquire updated addresses for the purpose of re-mailing the Class Notice. (Ibid). This skip trace effort
11 resulted in obtaining 16 updated addresses, to which Apex promptly re-mailed the Class Notice via
12 U.S First Class Mail. (Ibid). 16 Class Notices were re-mailed in total as a result of Apex’s skip-
13 tracing efforts. (Ibid). As of the date of this Motion, 6 Class Notices have been considered
14 undeliverable as no updated address was found despite conducting skip tracing. (Ibid).

15 Class Members had forty-five (45) calendar days from the initial mailing of the Class Notice
16 by the Settlement Administrator to submit a Request for Exclusion, Notice of Objection, and/or
17 Workweeks Dispute (“Response Deadline”). (Settlement Agreement, ¶ 6.ii). The Response Deadline
18 was August 10, 2024. (Nava Decl., ¶¶ 9-11). The Settlement Administrator did not receive any
19 Requests for Exclusion, Notices of Objection, and/or Workweeks Disputes. (Ibid). There are 345
20 Settlement Class Members, constituting 100% of the Class. (*Id.*, ¶ 12).

21 The highest Individual Settlement Share is currently estimated to be approximately \$2,204.43,
22 the average Individual Settlement Share is currently estimated to be approximately \$1,023.43, and the
23 lowest Individual Settlement Share is currently estimated to be approximately \$1.23; the highest
24 Individual PAGA Payment is approximately \$61.01, the average Individual PAGA Payment is
25 approximately \$37.59, and the lowest Individual PAGA Payment is approximately \$0.08. (*Id.*, ¶¶ 14
26 & 16).¹

27
28 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 \$25,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$7,482.96 will be part of the Net Settlement Amount).

1 **V. COMPLIANCE WITH PROCEDURAL REQUIREMENTS OF PAGA**

2 On March 15, 2024, Class Counsel submitted a copy of the Settlement Agreement to the
3 LWDA through its online submission portal in compliance with California Labor Code § 2699(1)(2).
4 (Genish Decl., ¶ 34). The LWDA has not objected or otherwise responded to the submissions. (Ibid).

5 **VI. EVALUATION OF SETTLEMENT FOR FINAL APPROVAL**

6 **A. The Legal Standard for Final Approval**

7 Before granting final approval of a class action settlement, the Court must review the
8 settlement for fairness. (Cal. Rules of Court, rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48
9 Cal.App.4th 1794, 1801). A court must take into account relevant factors, including, for example, the
10 strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation,
11 the amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
12 the experience and views of counsel, and the reaction of the class members to the proposed settlement.
13 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45; *Dunk*, 48 Cal.App.4th at 1801
14 ["The list of factors is not exhaustive and should be tailored to each case"]; *Officers for Justice v. Civil*
15 *Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625). Considering such factors, a presumption of fairness
16 exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and
17 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced
18 in similar litigation; and (4) the percentage of objectors is small. (*Wershba*, 91 Cal.App.4th at 245;
19 *Dunk*, 48 Cal.App.4th at 1802). "The settlement or fairness hearing is not to be turned into a trial or
20 rehearsal for trial on the merits. [The trial court is not] to reach any ultimate conclusions on the
21 contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty
22 of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
23 settlements." (*Officers for Justice, supra*, 688 F.2d at 625).

24 **B. The Settlement Should be Finally Approved**

25 California courts recognize that "a presumption of fairness exists where . . . [a] settlement is
26 reached through arm's-length bargaining." (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
27 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties' settlement negotiations
28 were at all times made at arm's-length and were adversarial. (Genish Decl., ¶ 35). The Settlement

1 was reached following a full day of mediation with a highly respected mediator with substantial
2 experience mediating wage and hour cases and continued negotiations. (Genish Decl., ¶ 35). Plaintiff
3 engaged in additional negotiations in order to finalize the long-form agreement presently before the
4 Court. (Ibid).

5 **C. The Settlement is Fair and Reasonable**

6 Courts typically assess the status of discovery in determining whether a class action settlement
7 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). The Parties engaged in
8 extensive formal and informal discovery prior to reaching a settlement. (Genish Decl., ¶ 36). Prior to
9 mediation, Defendant produced a random sampling of putative class members' time and pay data, as
10 well as Defendant's employee handbooks, relevant wage and hour policies, collective bargaining
11 agreements, and information regarding the total number of putative class members, the total number
12 of former putative class members, the average rate of pay of the putative class members, and the
13 number of workweeks and pay periods of the putative class members. (Ibid). This allowed Class
14 Counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims
15 and the potential class-wide damages. (Ibid). Plaintiff's investigation was sufficient to satisfy the
16 criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794,
17 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar").

18 Based on the information exchanged, the Parties extensively briefed issues regarding class
19 certification and liability and provided their analyses to the Mediator who helped the Parties debate
20 the strengths and weakness of their respective positions. (Genish Decl., ¶ 36). At all times, Plaintiff
21 was willing and prepared to litigate this matter through class certification and trial if the Parties had
22 been unable to reach a favorable resolution. (*Id.*, ¶ 37). Additionally, settlement negotiations were
23 conducted by highly capable and experienced counsel. (Ibid). Class Counsel are respected members
24 of the California State Bar with strong records of vigorous and effective advocacy and are experienced
25 in handling complex wage and hour class action litigation. (Genish Decl., ¶¶ 3-8 & 37; Declaration
26 of Miriam L. Schimmel in Support of Plaintiff's Motion for Final Approval of Class Action and PAGA
27 Settlement, Attorneys' Fees and Costs, Enhancement Payment, and Settlement Administration Costs
28 ["Schimmel Decl.," ¶¶ 3-11). Accordingly, Class Counsel had sufficient information and experience

1 to act intelligently in negotiating the Settlement.

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

10 Although Plaintiff contends the investigation and information discovered supports Plaintiff’s
11 contentions, Defendant raised potential defenses and other circumstances that impacted the risk of
12 proceeding on a class-wide basis. (Genish Decl., ¶ 38). Consideration of these risks factored into the
13 decision to enter the Settlement. (Ibid).

14 Class Counsel was aware of Defendant’s defenses and arguments and has also taken into
15 account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
16 inherent in such litigation, including those involved in class and/or representative adjudication. (*Id.*,
17 ¶ 39). Plaintiff further recognizes the burdens of proof necessary to establish liability for the claims
18 asserted in the Action, Defendant’s defenses, and the difficulties in establishing entitlement to
19 monetary recovery. (Ibid). Plaintiff has also considered the Parties’ settlement discussions, as well
20 as the evaluations of the Mediator, who is experienced and well-regarded in complex labor and
21 employment matters. (Ibid).

22 Defendant denied and continues to deny any liability and wrongdoing of any kind associated
23 with the claims alleged in the Action, and further denies that class certification is appropriate for any
24 purpose other than the Settlement. (*Id.*, ¶ 40). Defendant believes that it would ultimately prevail in
25 the Action. (Ibid). Defendant proffered defenses to both certification and to the merits of Plaintiff’s
26 claims. (Ibid). In addition to maintaining it complied with all relevant wage-and-hour laws throughout
27 the relevant time period, Defendant contended that Plaintiff’s claims are not suitable for class
28 certification because individual issues would predominate should this case go to trial. (Ibid). As with

1 all class actions, these complex cases raise difficult management and proof issues and, accordingly,
2 there is a significant risk that the Court may deny class certification. (Genish Decl., ¶ 40).

3 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
4 amount of wages due to each Class Member would be an expensive, time-consuming, and extremely
5 uncertain proposition. (*Id.*, ¶ 41). In order to prove liability and damages, Class Counsel would need
6 to request and analyze thousands of pages of documents, contact the Class Members, and obtain
7 declarations. (*Ibid.*). Obtaining the cooperation of current employees would also be difficult, given
8 the likely reluctance to aid prosecution of a lawsuit against a current employer. (*Ibid.*). On the other
9 hand, Defendant would likely be able to obtain the cooperation of their employees. (*Ibid.*). Moreover,
10 even if Plaintiff prevailed at class certification and trial, possible appeals would substantially delay
11 any recovery by the Class. (*Ibid.*).

12 In light of the inherent risk of litigation, the risk of obtaining and maintaining class
13 certification, and the costs of further litigation, the Settlement is in the best interest of the Class
14 Members, the PAGA Employees, and the State of California, and is within the accepted range of
15 recoveries for this type of litigation. (*Id.*, ¶ 42).

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

18 Class Counsel seeks one-third (1/3) of the Gross Settlement Amount (i.e., \$217,000.00) for
19 fees for the time spent litigating this matter and reimbursement of actual costs and expenses totaling
20 Seventeen Thousand Five Hundred Seventeen Dollars and Four Cents (\$17,517.04) incurred in the
21 prosecution of the Action. (Genish Decl., ¶ 43). The requested fees and costs are fair compensation
22 for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis,
23 especially in light of the substantial benefits achieved by Class Counsel for the Class Members. (*Ibid.*).

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

26 Courts have long recognized the "common fund" or "common benefit" doctrine, under which
27 attorneys who create a common fund or benefit for a group of persons may be awarded their fees and
28 costs to be paid out of the fund. (*See Serrano v. Priest ("Serrano III")* (1977) 20 Cal.3d 25, 34,

1 quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees'*
2 *Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)
3 15 Cal.3d 162, 167; see also *Boeing Co. v. Van Gernert* (1980) 444 U.S. 472,478; *Mills v. Electric*
4 *Auto-Lite Co.* (1970) 396 U.S. 375, 391-392).

5 The California Supreme Court has held that, "when a number of persons are entitled in
6 common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results
7 in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees
8 out of the fund." (*Serrano III, supra*, 20 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d 1; see also *Boeing,*
9 *supra*, 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit of persons other than
10 himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Mills, supra*,
11 396 U.S. at 391-392 (United States Supreme Court endorsing the common fund approach in class
12 actions)). California Practice Guide: Civil Trials and Evidence (The Rutter Group) at § 17:172.3
13 explains the common fund doctrine as follows:

14 Where the lawsuit results in the recovery of a fund or property benefiting
15 others as well as plaintiff (e.g., a class action), the court has inherent
16 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.

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

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

25 Whatever doubts may have been created by *Serrano III, supra*, 20 Cal.3d 25, [], or the
26 Court of Appeal cases that followed, we clarify today that use of the percentage method
27 to calculate a fee in a common fund case, where the award serves to spread the attorney
28 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

1 that fund, the court may determine the amount of a reasonable fee by choosing an
2 appropriate percentage of the fund created. The recognized advantages of the percentage
3 method - including relative ease of calculation, alignment of incentives between counsel
4 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.

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

7 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court stated:
8 “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others derive
9 benefits may require those passive beneficiaries to bear a fair share of the litigation costs.” Similarly,
10 in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, the California Supreme
11 Court recognized that the common benefit doctrine has been applied “consistently in California when
12 an action brought by one party creates a fund in which other persons are entitled to share.”

13 Numerous appellate courts have similarly found. (*See e.g., Knoff v. City and County of San*
14 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
15 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable powers);
16 *Rider v. County of San Diego* (1992) 1 I Cal.App.4th 1410, 1423 (attorneys’ fees and expenses properly
17 awarded from common benefit composed of illegally imposed sales and use tax); *Bank of America v.*
18 *Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by action
19 compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556,
20 567-568 (court upheld fee award equal to one-third of the damages to owners of residential property
21 in an inverse condemnation action)).

22 The Supreme Court noted that several courts have expressed frustration with the alternative
23 “lodestar” approach for deciding fee awards, which usually involves wading through voluminous and
24 often indecipherable time records. (*Laffitte*, 1 Cal.5th at 503; *see Lealao v. Beneficial California, Inc.*
25 (2000) 82 Cal.App.4th 19, 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373,
26 1375). The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class
27 counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing
28 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., \$217,000.00) 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 Action 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

1 cases such as this. Moreover, even if class certification were granted over Defendant's opposition,
2 there was no assurance that Plaintiff would succeed at trial. (Genish Decl., ¶¶ 39-41). Despite such
3 challenges, Class Counsel was able to persuade Defendant that it faced significant liability exposure
4 such that it was willing to pay \$651,000.00 to settle the Class Members' claims.

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

6 Class Counsel has substantial experience in wage-and-hour and other class action litigation,
7 including litigation involving the legal issues in this matter. (Schimmel Decl., ¶¶ 3-10; Genish Decl.,
8 ¶¶ 3-8). Class Counsel's skill in developing a factual record and convincing Defendant of its litigation
9 exposure under California law was essential to achieving the Settlement. Through its skill and
10 reputation, Class Counsel was able to obtain a settlement that provides an outstanding result for Class
11 Members. (*See generally* Schimmel Decl.).

12 **E. The Results Achieved**

13 The excellent results achieved by the Settlement support Class Counsel's request for attorneys'
14 fees. Class Members' support for the results achieved by Class Counsel is demonstrated by the
15 absence of any objections to either the Class Settlement or to Class Counsel's request for fees, both of
16 which were described clearly in the Class Notice. Settlement Class Members will be paid, on average,
17 approximately \$1,023.43 each, which is intended to compensate them for the alleged wage and hour
18 violations they suffered during their employment. (Nava Decl., ¶ 13).² This is a significant benefit
19 for the Settlement Class Members here as it represents a recovery for highly disputed claims. Equally
20 important is the fact that the State of California will receive \$30,000.00 for enforcement of labor laws
21 and education of employers. (Genish Decl., ¶ 48).

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

27
28

29 ² See n. 1.

1 they succeeded at trial, which is an uncertainty in itself.

2 **F. Preclusion of Other Employment**

3 As California law recognizes, Class Counsel's commitment to this litigation should not be
4 assessed in a vacuum. (*See Serrano, supra*, 20 Cal.3d at 49). A relevant factor in determining
5 attorneys' fees is whether the litigation required Class Counsel to forego other employment. (*See*
6 *ibid*). Class Counsel had to consider its workload during this litigation when considering taking on
7 additional work that was available, and which Class Counsel had to forego in order to devote the time
8 necessary to pursue this litigation. (Schimmel Decl., ¶ 14).

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

10 Fee calculations under the lodestar method would result in a similar award, demonstrating the
11 fairness of Class Counsel's percentage fee request. Under the lodestar method, a base fee amount is
12 calculated from a compilation of time reasonably spent on the case and the reasonable hourly
13 compensation of the attorney. The base amount is then adjusted by use of a multiplier in light of
14 various factors. (*Serrano III, supra*, 20 Cal.3d at 48). Class Counsel's hourly rates are summarized
15 in the Schimmel Decl. at ¶¶ 6-11.

16 One difficulty in determining the hourly rate of attorneys of similar skill and experience in the
17 relevant community is the scarcity of hourly fee-paying clients in class action litigation. (Schimmel
18 Decl., ¶ 13). As a practical matter, few if any employees or consumers pay attorneys' fees on an
19 hourly basis for such extensive litigation, and thus retainer agreements in such cases are based on a
20 stepped-up contingency fee (with the percentage increasing from one third to forty-five – and
21 sometimes even fifty percent, which is on par with personal injury contingency fee agreements – if
22 the case goes to trial). (*Ibid*). Therefore, there is no customary hourly billing rate for work that is
23 routinely based on a contingent fee relationship, but the nature of class action work should be strongly
24 considered by the Court. (*Ibid*). Wage and hour work presents a specialized and challenging area of
25 law that is not within the knowledge of many lawyers. (*Ibid*). This kind of class action work requires
26 specialized learning and the willingness to take large risks. (*Ibid*).

1 Class Counsel has spent approximately 197.60 total hours litigating these claims to date.³
2 (Schimmel Decl., ¶ 11). Class Counsel expects to spend another 10 hours in connection with finalizing
3 the motion for final approval and supporting documents, preparing for and attending the Final
4 Approval Hearing, and managing the Settlement through its conclusion, including anticipated
5 communications with defense counsel, the Settlement Administrator, our client, and Class Members).
6 (*Id.*, ¶ 12). In addition to time spent during litigation, reasonable hours also include the time spent
7 before the Action was filed, including time spent interviewing the client, investigating the facts and
8 the law, preparing the initial pleadings, as well as litigating the case. (*Webb v. Board of Educ.* (1985)
9 471 U.S. 234). Further, the fee award should include fees incurred to establish and defend the
10 attorneys' fee claim. (*Serrano v. Priest* (1982) 32 Cal .3d 621, 639 (“*Serrano IV*”). Based on the
11 rates of Class Counsel, the total fees incurred to date are \$172,142. (Schimmel Decl., ¶ 11). By the
12 conclusion of this matter, the total fees are estimated to be approximately \$182,642. (*Id.*, ¶ 12).

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

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

26 ³ In *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559, the court addressed the issue of what evidence is required in
27 California to support a fee application. The court held: “Testimony of an attorney as to the number of hours worked on a
28 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.

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

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

10 Given the unique reliance of our legal system on private litigants to enforce
11 substantive provisions of law through class and derivative actions, attorneys
12 providing the essential enforcement services must be provided incentives
13 roughly comparable to those negotiated in the private bargaining that takes
14 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.

15 In the class action context, that would mean attempting to award the fee that
16 informed private bargaining, if it were truly possible, might have reached.
17 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.

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

19 [T]rial judges need the flexibility *Serrano III* provides, as it enables them to
20 relate fee awards to the economic realities that determine the efficacy of the
private enforcement contemplated by our civil justice system.
21 Accordingly, we hold that, in cases in which the value of the class recovery
22 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
23 necessary to ensure that the fee awarded is within the range of fees freely
negotiated in the legal marketplace in comparable litigation.

24 (*Id.* at 49-50).

25 In looking at similar cases, including those set forth above, Class Counsel’s requested fee
26 comports to the market. Based on the reasonable hourly rates suggested by Class Counsel and the
27 collective hours worked in this matter, the requested fee award would represent a multiplier of about
28 1.3 over the current total fee lodestar – an amount well within, and even below, the accepted range for
class action cases. In this regard, Class Counsel’s fee request is reasonable.

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

2 Class Counsel's intention to request the Court's approval for payment of attorneys' fees was
3 clearly disclosed to each Class Member in the Court-approved Class Notice. (Genish Decl., ¶ 45; *See*
4 *also*, Nava Decl., Exh. A). As of the filing of this Motion, there has not been a single objection to the
5 request for attorneys' fees. (Nava Decl., ¶ 10). It is fair to conclude that the Class approves of/does
6 not take issue with the requested award of attorneys' fees. Based thereon, Class Counsel's request for
7 one-third (1/3) of the Gross Settlement Amount, equaling Two Hundred Seventeen Thousand Dollars
8 and Zero Cents (\$217,000.00), should be granted.

9 **I. Plaintiff's Cost Request is Reasonable**

10 Class Counsel seeks reimbursement of a total amount of Seventeen Thousand Five Hundred
11 Seventeen Dollars and Four Cents (\$17,517.04) in costs and expenses in this matter, which includes
12 reasonable future costs for filing the Motion. (Genish Decl., ¶ 43 & Exh. 3). All costs and expenses
13 were reasonably incurred in prosecution of this matter.

14 **VIII. THE REQUESTED ENHANCEMENT PAYMENT TO PLAINTIFF IS**
15 **REASONABLE**

16 The named Plaintiff should be awarded an Enhancement Payment in the amount of Seven
17 Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for his services as the Class
18 Representative and the risks in connection with that role. (Genish Decl., ¶ 46). Enhancement awards
19 in wage and hour cases typically range from \$5,000.00 to \$20,000.00, although some awards are
20 higher. (Ibid). Often, multiple class representatives receive awards in the above range. (*See e.g.*,
21 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 [approving an
22 enhancement request of \$10,000.00 per named plaintiff in a 188 member class]; *Cook v. Niedert*, 142
23 F.3d 1004, 1016 (7th Cir. 1998); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir.
24 1974) ["We also think there is something to be said for rewarding those drivers who protect and help
25 to bring rights to a group of employees who have been the victims of discrimination."]). Here, the
26 requested Class Representative Service Payment is modest, reasonable, and should be approved.

27 Plaintiff's actions establish that: (1) he sought to protect the interests of the Class above his
28 own personal interests; (2) the Settlement Class Members will be benefitted from his actions by
receiving a payment without having to do anything; and (3) Plaintiff has put forth a significant amount

1 of time and effort pursuing the litigation and seeing it through to resolution. (*See, generally, De La*
2 *Cruz Decl.*; *see also Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804
3 (discussing the criteria for determining class representative enhancement awards in concluding that a
4 requested award of \$25,000 for two class representatives was too high)).

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

13 In sum, Plaintiff has performed considerable services on behalf of the Class during the
14 litigation. (*See, generally, De La Cruz Decl.*). Class Counsel cannot understate the importance of the
15 role of an employee who is willing to search out an attorney and step forward to assume the risk of
16 litigation and retaliation in order to represent a class and put the interests of the class before his or her
17 interests. Plaintiff has understood that this is a class action where he is serving as the Class
18 Representative and must protect the Class Members' interests. (*Id.*, ¶ 10). Plaintiff was the catalyst
19 to the benefit reached for the Class Members, and has actively protected the Class Members' interests
20 during the pendency of this matter and will continue to do so even if the case was required to go to
21 trial. (*Ibid.*). Plaintiff spent numerous hours participating in this matter by searching for an attorney,
22 communicating with his attorneys on numerous occasions, searching for and producing relevant
23 documents related to his employment, responding to his attorneys' inquiries, helping his attorneys
24 respond to written discovery, meeting with his attorneys to prepare for his deposition, reviewing the
25 settlement documents, and approving the Settlement on behalf of all Class Members. (*See, generally,*
26 *De La Cruz Decl.*).

27 ///

28 ///

1 In contrast, without having to take on any of the risk incurred by Plaintiff or time spent by
2 Plaintiff in litigating this matter, Settlement Class Members will automatically be issued a payment
3 for their claims. It appears that the Settlement Class Members recognize this enhancement was
4 justified because since the time the Class received notice of the requested Enhancement Payment, no
5 one has objected to the request. Thus, the Enhancement Payment to Plaintiff is warranted to
6 compensate him for his time and effort, the fear and stress associated with assuming the responsibility
7 of serving as the Class Representative, and the concrete risks he assumed as the Class Representative.

8 **IX. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE**
9 **REASONABLE**

10 In Plaintiff's Motion for Preliminary Approval, Plaintiff requested, and the Court preliminarily
11 approved, the Settlement Administration Costs not to exceed Ten Thousand Dollars and Zero Cents
12 (\$10,000.00). (Genish Decl., ¶ 47). Apex is the approved Settlement Administrator. (Ibid). It is an
13 experienced class administrator and has adequately performed the administration tasks required by the
14 Preliminary Approval Order. (See generally Nava Decl.). Apex's *actual* costs to administer the
15 Settlement are only Eight Thousand Five Hundred Dollars and Zero Cents (\$8,500.00). (Nava Decl.,
16 ¶ 17 & Exh. B). Based thereon, the requested costs should be approved.

17 **X. THE PROPOSED LWDA ALLOCATION IS REASONABLE**

18 Pursuant to California Labor Code Section 2699(1), the Superior Court shall review and
19 approve the settlement of penalties sought under that California Labor Code Section. (Cal. Lab. Code
20 § 2699(1)). For all of the reasons stated above, the Settlement is fair, reasonable, and adequate, and
21 should be approved. As part of the Settlement, Defendant has agreed to pay Forty Thousand Dollars
22 and Zero Cents (\$40,000.00) to settle the claims of the PAGA Employees brought pursuant to PAGA,
23 of which the payment of Thirty Thousand Dollars and Zero Cents (\$30,000.00) (75% of the PAGA
24 Amount) will be paid to the LDWA for education and enforcement purposes. (Genish Decl., ¶ 48).

25 It is extremely common in approved wage and hour class action cases that settle that only a
26 small portion of the total settlement is paid to PAGA penalties "in order to maximize payments to
27 class members." (*Magadia v. Wal-Mart Assocs.* (N.D. Cal. May 31, 2019, No. 17-CV-00062-LHK)
28 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

1 \$10,000 in PAGA penalties out of a total settlement amount of \$900,000]; *Thio v. Genji, LLC* (N.D.
2 Cal. 2014) 14 F. Supp. 3d 1324, 1330 [preliminarily approving \$10,000 in PAGA penalties out of a
3 total settlement amount of \$1,250,000]; *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012
4 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 [granting final approval of \$10,000 in PAGA
5 penalties out of a total settlement amount of \$2,500,000]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal.
6 Oct. 31, 2012) 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 [granting final approval of
7 \$10,000 in PAGA penalties out of a total settlement amount of \$3,700,000]; *Chu v. Wells Fargo Invs.,*
8 *LLC* (N.D. Cal. Feb. 16, 2011) 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1 [granting final
9 approval of \$10,000 in PAGA penalties out of a total settlement amount of \$6,900,000]]. Like here,
10 in these approved settlements, the Parties generally maximized statutory penalties and minimized
11 PAGA penalties to focus on claims to the Class Members, the persons who actually suffered the
12 California Labor Code violations. (Genish Decl., ¶ 49).

13 **XI. THE CLASS RECEIVED THE BEST PRACTICABLE NOTICE**

14 California law vests the Court with broad discretion in fashioning an appropriate notice
15 program. (See California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-
16 74). To protect the rights of absent class members, the parties must provide class members with the
17 best notice practicable of a potential class action settlement. (*Phillips Petroleum Co. v. Shutts* (1985)
18 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76 [individual notice
19 must be sent to all class members who can be identified through reasonable efforts]; *Mullane v. Central*
20 *Hanover Bank & Garretson Company* (1950) 339 U.S. 306, 314 [best practicable notice is that which
21 is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of
22 the action and afford them an opportunity to present their objections"]). The content and method of
23 the notice should be designed to apprise the class members of the terms of the proposed settlement
24 and of the class members' rights regarding the settlement. (See *Mullane, supra*, 339 U.S. at 314;
25 *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323
26 F. Supp. 364, 378).

27 ///

28 ///

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

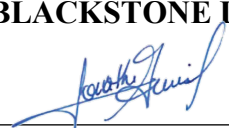
11 XII. CONCLUSION

12 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
13 Motion for Final Approval of Class Action and PAGA Settlement, and approve: (1) the requested
14 attorneys' fees to Class Counsel of \$217,000; (2) the requested reimbursement of actual costs and
15 expenses to Class Counsel of \$17,517.04; (3) the requested Enhancement Payment to Plaintiff of
16 \$7,500.00; and (4) the requested Settlement Administration Costs to the Settlement Administrator of
17 \$8,500.00; and permit the filing of a memorandum that exceeds the page limit.

18 Respectfully submitted,

19 Dated: August 26, 2024

BLACKSTONE LAW, APC

20
21 By: 

22 Jonathan M. Genish
23 Miriam L. Schimmel
24 Attorneys for Plaintiff Victor De La Cruz
25 and the Class
26
27
28