

R. Craig Clark (SBN 129219)
cclark@clarklawyers.com
Alicja A. Urtnowski (SBN 321215)
aurtnowski@clarklawyers.com

CLARK LAW GROUP

3258 Fourth Avenue
San Diego, CA 92103
Telephone: (619) 239-1321

Attorneys for Plaintiff ILANA RAMOS

JAMES HAWKINS APLC

James R. Hawkins, Esq. (#192925)
Gregory Mauro, Esq. (#222239)
Michael Calvo, Esq. (#314986)
Lauren Falk, Esq. (#316893)
Ava Issary, Esq. (#342252)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com
Email: Lauren@jameshawkinsaplc.com
Email: Ava@jameshawkinsaplc.com

Attorneys for Plaintiff JAMES GREGORY CONQUEST

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

JAMES GREGORY CONQUEST and ILANA
RAMOS individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

TRIPLE CANOPY, INC.; CONSTELLIS
INTEGRATED RISK MANAGEMENT
SERVICES, INC.; TRIPLE CANOPY – A
CONSTELLIS COMPANY; and DOES 1-50,
inclusive,

Defendants.

CASE NO.: 34-2022-00322538
Hon. Lauri A. Damrell

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; ATTORNEYS' FEES,
COSTS, ENHANCEMENT AWARD AND
ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS OF
CLASS COUNSEL WALTER L. HAINES,
R. CRAIG CLARK AND JAMES
HAWKINS.**

Date: February 2, 2024
Time: 9:00 a.m.
Dept: 28

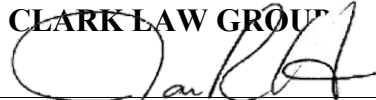
1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**
2 **NOTICE IS HEREBY GIVEN** that on February 2, 2024 at 9:00 a.m. or as soon thereafter as the
3 matter may be heard in Department 28 of the above captioned Court, before the Honorable Lauri A.
4 Damrell, Plaintiffs James Gregory Conquest and Ilana Ramos (“Plaintiffs”), by and through
5 Plaintiffs’ counsels of record, will and hereby do move the Court for Final Approval of the Class
6 Action and Private Attorneys General Act Settlement, awarding attorneys’ fees, litigation costs,
7 Class Representative Enhancement Payments, Settlement Administration Costs, and entering final
8 approval and judgment.

9 This Motion is made pursuant to Rule 3.769 of the California Rules of Court and Labor Code
10 section 2699(l). This Motion is based on this Notice of Motion and Motion, the attached
11 Memorandum of Points and Authorities, the accompanying Declarations of James R. Hawkins,
12 Walter L. Haines, R. Craig Clark, Madely Nava of Apex Class Action, LLC, the declarations of
13 Plaintiffs Ramos and Conquest attached to the “Hawkins” Declaration, the Amended Joint
14 Stipulation For Settlement And Release Of Class Action And Representative Action Claims (the
15 “Settlement Agreement”), argument of counsel, all papers and pleadings filed in the action, and
16 upon any further information or evidence requested by the Court at the time of hearing on this
17 Motion.

18
19
20 Dated: January 17, 2024

JAMES HAWKINS APLC

CLARK LAW GROUP



JAMES R. HAWKINS

GREGORY MAURO

MICHAEL CALVO

LAUREN FALK

AVA ISSARY

Attorneys for Plaintiffs

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TABLE OF CONTENTS

I. INTRODUCTION.....4

II. BACKGROUND, INVESTIGATION, DISCOVERY.....5

1. The Settlement Provides Reasonable Compensation to Class Members.....6

III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS’ RESPONSE....8

A. Terms of the Settlement.....8

B. Released Claims.....9

C. The Timing of the Release is Appropriate.....9

D. The Class Members Support the Settlement- Zero (0) Objections and Only One
(1) Opt-Out.....10

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.....11

A. The Settlement Satisfies the Standard for Final Approval.....11

V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS.....12

A. The Requested Fee Award is Fair and Reasonable, and Calculated as a Percentage
of a Common Fund.....12

1. The Requested Attorneys’ Fee is Within the Range of Fees Approved
in Comparable Common Fund Cases.....14

2. A Lodestar Cross-Check Confirms the Reasonableness of the
Requested Fee.....15

3. Class Counsel’s Hourly Rates are Reasonable.....15

4. Class Counsel’s Total Hours are Reasonable.....16

5. Costs of Litigation are Reasonable.....17

VI. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS ARE
REASONABLE.....17

VII. THE SETTLEMENT ADMINISTRATOR’S COSTS ARE REASONABLE.....17

VIII. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE.....18

IX. CONCLUSION.....18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
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23
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27
28

TABLE OF AUTHORITIES

Bell v Farmers Ins. Exchange,
 (2004) 115 Cal App 4th 715.....17

Birch v. Office Depot, Inc.,
 USDC Southern District, Case No. 06cv1690 DMS (WMC).....14

Cellphone Fee Termination Cases
 (2010) 186 Cal. App. 4th 1380.....17

Children’s Hosp. and Med. Ctr. v. Bonta,
 97 Cal.App.4th 740 (2002).....15

City and County of San Francisco v. Sweet
 (1995) 12 Cal.4th 105.....13

Dunk v. Ford Motor Company
 (1996) 48 Cal.App.4th 1794.....11,12

Flannery v. California Highway Patrol
 (1998) 61 Cal. App. 4th 629.....16

In re Cellphone Fee Termination Cases
 (2010) 186 Cal. App. 4th 1380.....17

In re Marciano,
 459 B.R. 27, 53 (B.A.P. 9th Cir. 2011), aff’d, 708 F.3d 1123 (9th Cir. 2013).....10

In re Rite Aid Corp. Securities Litigation,
 396 F.3d 294 (3d Cir. 2005).....13

Johnson v. Am. Airlines, Inc.,
 157 Cal.App.3d 427 (1984).....9,10

Ketchum v. Moses
 (2001) 24 Cal. 4th 1122.....15

Kullar v. Foot Locker Retail, Inc.,
 168 Cal.App.4th 116 (2008).....10

1		
2	<i>Laffitte v. Robert Half Int’l, Inc</i>	
3	1 Cal.5th 480, 506 (2016),	12,13
4	<i>Martin v. Ameripride Servs.,</i>	
5	2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011).....	14
6	<i>New York Gaslight Club, Inc. v. Carey</i>	
7	(1980) 447 U.S. 54.....	16
8	<i>North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.,</i>	
9	27 Cal.App.4 th 1085 (1994).....	10
10	<i>Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.</i>	
11	(9th Cir. 1982) 688 F.2d 615.....	5,11
12	<i>PLCM Group, Inc v. Drexler</i>	
13	(2000) 22 Cal. 4th 1084.....	16
14	<i>Potter v. Pacific Coast Lumber Co. of Cal.</i>	
15	(1951) 37 Cal. 2d 592.....	11
16	<i>Quinn v. State of California</i>	
17	(1995) 15 Cal.3d 162.....	13
18	<i>Rawlings v. Prudential-Bache Properties, Inc.,</i>	
19	9 F.3d 513 (6th Cir. 1993).....	13
20	<i>Rippee v. Boston Mkt. Corp.,</i>	
21	USDC Southern District, Case No. 05cv1359 BTM (JMA).....	14
22	<i>Serrano v. Priest,</i>	
23	20 Cal.3d 25, 34 (1977).....	13
24	<i>Serrano v. Priest</i>	
25	(1982) 32 Cal.3d 621.....	15
26	<i>Serrano v. Unruh,</i>	
27	32 Cal.3d 621, 627 (1982).....	16
28		

1	<i>Stambaugh v. Superior Court</i>	
2	(1976) 62 Cal. App. 3d 231.....	11
3	<i>Syers Props. III, Inc. v. Rankin,</i>	
4	226 Cal.App.4th 691 (2014).....	16
5	<i>Thayer v. Wells Fargo Bank</i>	
6	92 Cal. App. 4 th 839.....	15
7	<i>Villacres v. ABM Indus. Inc.,</i>	
8	189 Cal.App.4 th 562 (2010).....	9,10
9	<i>Vincent, supra,</i>	
10	557 F.2d at 769.....	13
11	<i>Wershba v. Apple Computer, Inc.</i>	
12	(2001) 91 Cal. App. 4th 224.....	11,12,14

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Statutes, Rules and Regulations

California Labor Code Private Attorneys General Act of 2004.....passim

California Civ. Proc. Code §§ 680.010-724.260.....9

California Labor Code 201.....6

California Labor Code 203.....6

California Labor Code 204.....6

California Labor Code 210.....6

California Labor Code 226.....6

California Labor Code 226.3.....6

California Labor Code 226.7.....6

California Labor Code 246.....6

California Labor Code 432.....6

California Labor Code 510.....6

California Labor Code 512.....6

California Labor Code 551.....6

California Labor Code 558.....6

California Labor Code 1174.....6

California Labor Code 1174.5.....6

California Labor Code 1175.....6

California Labor Code 1194.....6

California Labor Code 1197.....6

California Labor Code 1197.1.....6

California Labor Code 1198.....6

California Labor Code 2802.....6

Secondary Authorities

Manual § 21.62 n.971.....17

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court preliminary approved the settlement on or about September 1, 2023. (James
4 Hawkins Decl. “Hawkins”, **Exhibit A** - Preliminary Approval Order). Plaintiffs Ramos and
5 Conquest (“Plaintiffs”), now respectfully request that this Court grant final approval of the
6 amended settlement attached to the Hawkins Declaration as **Exhibit B**, which seeks to resolve
7 claims against Defendants Triple Canopy, Inc. (“Triple Canopy”), Constellis Integrated Risk
8 Management Services, Inc. (“CIRMS”), and Triple Canopy – A Constellis Company (collectively,
9 “Defendants”) in exchange for a non-reversionary Gross Settlement Amount of (“GSA”) of Nine
10 Hundred and Forty Thousand Dollars and Zero Cents (\$940,000.00).

11 The Class Members overwhelmingly supported the Settlement, as there is a 99.88%
12 participation rate, with zero objections and 860 out of 861 Participating Class Members with only
13 one (1) request for exclusion from the Settlement. The *highest* Individual Settlement Amount to a
14 Participating Class Member is currently estimated to be approximately \$1,143.65, the *average*
15 Individual Settlement Amount is currently estimated to be approximately \$536.76, and the *lowest*
16 Individual Settlement Amount is currently estimated to be approximately \$7.62. These amounts
17 are subject to employee-side tax and withholdings. (Administrator Decl. of Madely Nava-
18 hereinafter “Nava”, ¶ 15).

19 Plaintiffs also move for final approval of attorneys’ fees in the amount of \$313,333.33
20 which is one third of GSA. As will be demonstrated herein, Class Counsel’s attorney fee request is
21 supported using the percentage fee method and the lodestar method. Second, Plaintiffs move for
22 final approval of payment of the litigation costs in the amount of \$16,673.46, all of which was
23 incurred in litigating this matter. Third, Plaintiffs move for final approval of the Class
24 Representative Enhancement Payments to Plaintiffs in the sum of \$10,000.00 each, to compensate
25 the Class Representatives for their service as a Class Representative and providing a general
26 release of their claims against Defendants – a release significantly greater than the Class Members
27 provided – and for the risks absorbed and time spent litigating the case. Plaintiffs played a vital
28 role in representing Class Members in this case and spearheading the lawsuit to seek monetary

1 relief on behalf of all Class Members. Fourth, Plaintiffs move for final approval of the payment of
2 \$14,000.00 in administrative costs to Apex Class Action, LLC. Fifth, Plaintiffs move for final
3 approval of the \$100,000.00 PAGA Payment and the payment to the Labor and Work
4 Development Agency (“LWDA”) for its share of the PAGA Payment (\$75,000.00, which is 75%
5 of \$100,000.00; with the remaining \$25,000.00 payable to Aggrieved Employees).

6 This case required many hours of attorney time from Class Counsel and sought relief on
7 behalf of 861 potential class members within the State of California: all current and former non-
8 exempt hourly paid Protective Security Officers who performed any on-post work for Triple
9 Canopy on its Northern California and Central California Department of Homeland Security
10 Contracts during the Class Period. Class Period means period from June 11, 2020 through the earlier date
11 of April 24, 2023 or the date of preliminary approval of the settlement by the Court.¹ (Settlement
12 Agreement ¶ 9).

13 This litigation involved the review and analysis of documents, policies, and practices, as
14 well as a full day of mediation. Most importantly, the Settlement and all its terms received
15 overwhelming support from Class Members, as there were no objections and only one (1) request
16 for exclusion. Therefore, Plaintiffs respectfully request the Court grant final approval of the
17 Settlement, attorneys’ fees, litigation costs, Class Representative Enhancement Payments,
18 Settlement Administration Costs, and payment to the LWDA in the amounts preliminarily
19 approved by the Court and as fully disclosed to Class Members.

20 II. BACKGROUND, INVESTIGATION, DISCOVERY

21 On June 28, 2022, Conquest filed a class action complaint in the Action alleging six causes
22 of action for: (1) failure to pay (including to properly pay) all wages, including minimum and
23 overtime wages; (2) failure to timely pay final wages; (3) failure to provide accurate itemized
24 wage statements; (4) failure to reimburse for business expenses; (5) failure to pay reporting time
25 pay; and (6) unfair business practices for the aforementioned violations of the Labor Code, as well
26

27 ¹ The preliminary approval order date was September 1, 2023. Thus, the class period ends on
28 April 24, 2023.

1 as for violations for alleged meal and rest break violations, recordkeeping violations and day of
2 rest violations, respectively (the “Conquest Complaint”). (Hawkins Decl., ¶ 3). On June 28, 2022,
3 Plaintiff James Conquest filed a notice with the Labor & Workforce Development Agency
4 (“LWDA”) alleging that Defendants violated Labor Code sections 201-203, 226, 226.3, 226.7,
5 510, 512, 551, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, pursuant to
6 Labor Code section 2699 (the “Conquest PAGA Notice”). (Hawkins Decl., ¶4).

7 On June 24, 2022, Ramos filed a notice with the LWDA, pursuant to Labor Code section
8 2699, against Defendants Triple Canopy and CIRMS, alleged that they violated Labor Code sections
9 201-204, 210, 226, 226.3, 226.7, 246, 432, 510, 512, 551, 558, 1174, 1174.5, 1175, 1194, 1194.2,
10 1197, 1197.1, 1198, and 2802 (the “Ramos PAGA Notice”). (See Declaration of R. Craig Clark,
11 hereinafter “Clark Decl.” ¶ 5).

12 On June 2, 2023, Plaintiffs filed their First Amended Complaint as part of this settlement
13 proceeding (the “Operative Complaint”). The Operative Complaint added Ramos as a Plaintiff,
14 added Ramos’s counsel as Plaintiffs’ counsel, and added both Plaintiffs’ underlying claims based
15 on alleged Labor Code violations as asserted in the Plaintiffs’ PAGA Notices on both a class and
16 representative basis. (Clark Decl., ¶ 6). Defendants have and continue to deny the allegations in the
17 Operative Complaint, deny any failure to comply with the laws identified in the Operative
18 Complaint, and deny any and all liability for the causes of action alleged.

19 On January 18, 2023, the parties participated in a full-day mediation with private mediator
20 Jason Marsili, where they reached a global resolution of all of the claims asserted in the Conquest
21 Action, the PAGA Notices submitted by the Plaintiffs (and any as yet unpled Labor Code violations
22 asserted therein which could have been pled on a class-wide basis) and the Ramos Dispute Letter.
23 (Hawkins Decl., ¶8). The settlement was the product of a non-collusive settlement process. (Hawkins
24 Decl., ¶ 9).

25 Plaintiffs’ counsel Clark Law Group, United Employees Law Group, and James Hawkins
26 APLC, (“Class Counsel”) have conducted a thorough investigation into the factual and legal issues
27 implicated by Plaintiffs’ claims and was able to objectively assess the settlement’s reasonableness.
28 Plaintiffs’ Counsel received a considerable amount of documents and data. In preparation for

1 mediation, Defendants produced raw timekeeping and payroll data for a 20% sampling of Class
2 Members and Aggrieved Employees, personnel and payroll data for Plaintiffs, relevant Collective
3 Bargaining Agreements and other of Defendants' policies and documents which applied to the
4 employment of Plaintiffs and the Class Members and Aggrieved Employees, and data relating to
5 the number of Class Members and Aggrieved Employees, the number of shifts worked during the
6 Class Period and PAGA Period, the average hourly rate of pay for each Class Member, and other
7 data specific to the Class Members and Aggrieved Employees which allowed Plaintiffs to conduct
8 a full damage analysis. (Hawkins Decl., ¶ 10).

9 In reaching the proposed settlement, Plaintiffs counsel's negotiation efforts took into
10 consideration relevant factors such as the size of the class, the information, data, and documents
11 obtained in the litigation and/or otherwise exchanged pursuant to the mediation privilege; the
12 experience of the named Plaintiffs; the strengths and weaknesses of the case; the uncertain outcome
13 and risk of litigating complex actions; the time and expense in litigating a case through trial;
14 Defendants' defenses; and the non-reversionary nature of the settlement. (Clark Decl., ¶ 13).

15 1. The Settlement Provides Reasonable Compensation to Class Members

16 As a result of the mediation, the parties agreed to settle this matter for a Gross Settlement
17 Amount ("GSA") of \$940,000.00 (Hawkins Decl., ¶ 2, Ex. B-Settlement Agreement ¶ 18). Based
18 on their own respective independent investigations and evaluations, and after taking into account
19 the sharply disputed factual and legal issues involved in this matter, the risks attending further
20 prosecution of the case, and the monetary benefits received under the Settlement despite the
21 questionable nature of the claims, Plaintiffs' counsel is of the opinion that Settlement for the
22 consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate
23 and is in the best interests of the Class Members. (Hawkins Decl., ¶¶ 8-10; Clark Decl., ¶¶ 9-19).

24 Even without the presumption of fairness and reasonableness, the settlement is clearly
25 within the range of reasonableness as thoroughly discussed in detail in the motion for preliminary
26 approval, and as considered by the Court in granting preliminary approval, (Hawkins Decl., ¶¶ 9-
27 18; Ex. A- Order Granting Preliminary Approval).

28 Accounting for the risks of continued litigation and impediments to discovery, Plaintiffs

determined that a settlement amounting to \$940,000.00 was fair and reasonable and the court preliminarily agreed. (Hawkins Decl., ¶¶ 11-16). See, e.g., *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).² (*Id.*)

III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS’ RESPONSE

A. Terms of the Settlement

The GSA is Nine Hundred Thousand Dollars and Zero Cents (\$940,000.00). This amount includes, the Settlement Administration Costs of \$14,000.00; the Class Representative Enhancement Payments of up to \$10,000.00 to each of the two (2) Plaintiffs; Court-approved

² See also *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys’ fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney’s fees and costs.”).

attorneys' fees up to \$313,333.33, litigation costs to Class Counsel in the amount of \$16,673.46; and PAGA penalties of \$100,000.00 with 75% of that amount paid to the LWDA and the remaining 25% paid to the Aggrieved Employees. The Net Settlement Amount ("NSA") is approximately \$470,605.84 for which \$455,605.84 is estimated to go to Participating Class Members and \$25,000.00 to Aggrieved Employees. (Nava Decl., ¶ 11-15). The resulting Net Settlement Amount is approximately \$483,932.38.

The Settlement is a common fund settlement with no reversion to Defendants. Thus, each of the participating Settlement Class Members will be paid his or her pro-rata share of the NSA.

B. Released Claims

Subject to approval by this Court, and in exchange for the consideration recited in the Settlement Agreement, the Released Claims are all claims that have been or could have been reasonably alleged or asserted in the PAGA Notices and any of the pleadings that have been filed in the Action, including without limitation in the First Amended Complaint. (Hawkins Decl., Ex. B-Settlement Agreement ¶ 28).

C. The Class Members Support the Settlement – Zero (0) Objections and Only One (1) Opt-Out

On September 1, 2023, the Court granted Preliminary Approval of the Settlement, conditionally certified the class for settlement purposes, appointed Apex Class Action, LLC to act as the administrator, approved the Notice to be sent to the Class, and directed that the Notice be mailed to the Class via U.S. First Class Mail. (Hawkins Decl., Ex. A- Order Granting Preliminary Approval). On October 17, 2023, Apex mailed the Notices to 861 Class Members. (Nava Decl., ¶7). Out of the 861 Notices, only 12 were deemed undeliverable after attempts to ascertain the addresses. (Nava Decl., ¶¶ 7-11). As a result of the mailing, there is a 99.88% participation rate and 860 Class Members will be mailed a settlement check. (*Id.* ¶ 13).

All settlement checks to Class Members and/or Aggrieved Employees that remain uncashed after one hundred eighty (180) days of the mailing by the Claims Administrator, or for those Class Members and/or Aggrieved Employees whose Notice Packets were deemed undeliverable, shall be transmitted by the Settlement Administrator to the California Unclaimed Property Fund, to be held

there for the benefit of such class members under California’s escheatment laws. (Settlement Agreement ¶ 68).

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Settlement Satisfies the Standard for Final Approval

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

In deciding whether to approve a class settlement, a court evaluates whether the proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. Of S.F.* (9th Cir. 1982) 688 F.2d 615, 625). A court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801. However, “a presumption of fairness exists where: (1) the settlement is reached through arms-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Id.* at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a court should consider additional relevant factors, including the strength of the plaintiffs’ case compared to the settlement amount; the risk, expenses, complexity, and likely duration of further litigation; and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th at 1802.

At the time of preliminary approval, the Court was provided with sufficient information to satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown until after the Class had an opportunity to respond to the Settlement as explained in the Notice. Subject only to the Class’s reaction to the Settlement, the Court preliminarily presumed the Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and adequate time provided to the Class to object to the Settlement, no class member submitted objections and only one (1) submitted opt outs of the settlement, **resulting in a 99.88% participation rate from the**

1 **Class.** (Nava Decl., ¶ 13). Thus, the proposed Settlement is entitled to the presumption that it is fair
2 and in all other respects proper and should be finally approved.

3 **V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS**

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

6 Class Counsel applies for an award of attorneys’ fees in the sum of \$313,333.33 of the GSA,
7 and litigation costs of \$16,673.46 (Hawkins Decl., ¶¶ 17-21, Ex. C; Clark Decl., ¶ 40-42, Ex. 2;
8 Declaration of Walter L. Haines, herein after “Haines Decl.”, ¶7). When a settlement results in a
9 common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the
10 common fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of
11 recovery” method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.*
12 that “[t]he percentage of fund method survives in California class action cases.” 1 Cal.5th 480, 506
13 (2016), in stating:

14 The recognized advantages of the percentage method—including relative ease of
15 calculation, alignment of incentives between counsel and the class, a better
16 approximation of market conditions in a contingency case, and the encouragement it
17 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.

18 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977)
19 (“when a number of persons are entitled in common to a specific fund, and an action brought by a
20 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
21 plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d
22 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the
23 trial court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings*
24 *v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
25 method for calculating attorney’s fees more accurately reflects the results achieved for the putative
26 class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’
27 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
28 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The

percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’³

The purpose of the common fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent, supra*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.” The reasons for applying the common fund doctrine include: “...fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful.” *Id.* Because there is a defined and clearly traceable benefit to the Class, the Court can base an award of attorneys’ fees using a ‘common fund’ approach to compensate Class Counsel.

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

Assessing an appropriate fee based on a percentage of the fund involves considering “all of the circumstances of the case.” Appellate cases addressing fees arise almost exclusively where

³ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . . they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee”).

awards were challenged by Defendants or objectors – the only parties with standing to appeal. *Wershba*, 91 Cal.App.4th at 236.

The requested fee falls in the mid-range of percentage class fee awards, which generally range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates Class Counsel for their efforts, as well as the result achieved for the benefit of the Class. Numerous courts in California routinely approve fee requests equal to or greater than 35% of the common fund. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class action settlement). In fact, the Sacramento County Superior Court has awarded fees of 35% of the common fund in wage and hour class actions. (*McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269; *Uribe v. EcoGuard Pest Management, Inc.*, Case No. 34-2021-00300650; *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634; *Blair v. Clark Wagaman Designs*, Case No. 34-2021-00313156).

Additionally, Plaintiffs’ counsel have entered into a written fee splitting agreement and agreed to split the requested fees as follows: 33.33% to Clark Law Group, 16.67% to United Employees Law Group, and 50% to James Hawkins APLC. (Hawkins Decl., ¶ 17). In short, Class Counsels’ fee request of \$313,333.33 (33.33% of the common fund) is in line with awards in similar cases in California and demonstrates that Class Counsels’ fee request is consistent with market rates and is reasonable.

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

Class Counsels’ fee request is reasonable when calculated using the lodestar method. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. *Serrano*, 20 Cal. 3d at 48. The court then may enhance this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success

1 achieved. *Id.* at 49; see also *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells*
2 *Fargo Bank*, 92 Cal.App.4th 819, 834 (2001), [“[t]here is no...rule limiting the factors that
3 may justify an exercise of judicial discretion to [adjust the] lodestar”].

4 As of the date of filing, Class Counsel worked approximately 543.3 combined documented
5 hours on this case.⁴ Thus, the total lodestar for Class Counsel is approximately **\$427,966.50** which
6 is in excess of the fees Class Counsel is requesting. (Clark Decl., ¶¶ 36-37; Haines Decl., ¶¶ 5-6;
7 Hawkins Decl., ¶ 17-19). All of the work and tasks performed by Class Counsel were reasonable
8 and necessary to the prosecution of this case. (*Id.*).

9 **3. Class Counsel’s Hourly Rates are Reasonable**

10 Class Counsels’ hourly rates are between \$200 and \$1150 and are in line with rates typically
11 approved in wage and hour class action litigation and which rates have been approved by Courts in
12 California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County
13 Superior Courts. (Hawkins Decl., ¶19; Clark Decl., ¶ 38; *Children’s Hosp. and Med. Ctr. v. Bonta*,
14 97 Cal.App.4th 740, 746 (2002) (noting rates were reasonable where they were “within the range of
15 reasonable rates charged by and judicially awarded comparable attorneys for comparable work”).

16 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
17 experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095.
18 When determining a reasonable hourly rate, courts may consider factors such as skill and
19 experience, the nature of the work performed, the relevant area of expertise and the attorney’s
20 customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.
21 Class Counsels’ skill and experience support their hourly rates. Their practices are limited
22 exclusively to litigation, focusing on the representation of employees in wage and hour and
23 consumer class action matters. (Hawkins Decl., ¶ 16; Clark Decl., ¶¶ 20-32; Haines Decl., ¶4). As
24 prominent attorneys in the field of wage and hour class action litigation, Class Counsel continually
25 monitors the prevailing market rates charged by both defense and plaintiff law firms and set the
26

27 ⁴ James Hawkins APLC expended 277.60 hours, Clark Law Group expended 252.8 hours, and
28 United Employees Law Group expended 12.9 hours in total on litigating this matter. (Clark Decl.,
¶¶ 36-37; Haines Decl., ¶¶ 5-6; Hawkins Decl., ¶ 18).

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

6 **4. Class Counsel's Total Hours are Reasonable**

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

12 Class Counsel expended a combined total of approximately 543.3 hours on this case. The
13 work performed to achieve a settlement that will provide valuable consideration to the Class, is
14 summarized by Class Counsel in the declaration submitted herewith. (Hawkins Decl., ¶¶ 17-21;
15 Clark Decl., ¶¶ 36-37; Haines Decl., at ¶¶ 5-6); *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th
16 691, 699 (2014) ("Because time records are not required under California law ... , there is no
17 required level of detail that counsel must achieve.") (internal quotations omitted). All tasks and work
18 performed were reasonable and necessary to the prosecution of this case. The work performed was
19 justified in light of the result achieved.

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

21 Class Counsel seeks reimbursement of the litigation costs and expenses of \$16,673.46.
22 These costs were reasonable and necessary to prosecute this case and the results achieved and are
23 fair, and reasonable. (Hawkins Decl., ¶¶ 20-21, Ex. C; Clark Decl., ¶¶ 40-42, Ex. 2; Haines Decl.,
24 ¶7).

25 **VI. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS ARE** 26 **REASONABLE**

27 Class Counsel seeks approval of a \$10,000.00 Class Representative Enhancement Payment
28 to each of the named Plaintiffs/Class Representatives. The requested enhancement awards are

reasonable in light of the general releases of all claims Plaintiffs agreed to, greater than the release given by Class Members, the benefits Plaintiffs conferred upon the entire Class resulting in payments to all Class Members, the time spent assisting counsel with the investigation and prosecution of these claims and consenting to the proposed Settlement. Furthermore, in pursuing this action on behalf of the Class, Plaintiffs risked a judgment for attorneys' fees and costs in the event this matter had been lost. (Hawkins Decl., ¶¶ 22-23; *See also* declarations of Plaintiffs Ramos and Conquest filed concurrently herewith)

Courts routinely approve service payments, or incentive awards, to compensate named plaintiffs for the services they provide and the risks they incur during class litigation. *See In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the total \$20,000.00 Class Representative Enhancement Payment with \$10,000.00 to each named Plaintiff continues to be fair, appropriate, and justified as part of the overall settlement.

VII. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE

The Parties agreed to hire Apex Class Action, LLC as the administrator, and the Court approved this choice. The Administrator was responsible for formatting, printing and mailing the Notice. It was also responsible for updating addresses and re-mailing Notices returned as undeliverable, responding to Class Member inquiries, answering questions from Counsel for the Parties, and providing a declaration to document its duties and responsibilities under the settlement. Plaintiff now request that the Court approve the \$14,000.00 fee to Apex Class Action, LLC for services rendered and to be rendered. (Nava Decl., ¶¶ 3-18). Following the grant of final approval, the Administrator's duties will continue in order to calculate and mail the Individual Settlement Payment checks to Class Members, perform tax reporting obligations, disburse other payments as ordered by the Court, and perform such other duties as set forth in the Settlement Agreement. The fee of \$14,000.00 for services rendered and to be rendered is fair and reasonable and should be granted.

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

2 The PAGA payment of \$100,000.00 with 75% of \$100,000.00 to the LWDA and 25% to the
3 aggrieved employees is reasonable under the circumstances. The Parties negotiated a good faith
4 amount for PAGA penalties. The PAGA penalties allocation not the result of self-interest at the
5 expense of other Class Members. The LWDA was also provided notice of the Settlement with the
6 concurrently filing of the preliminary approval motion and the instant motion. Plaintiffs did not
7 receive a response or objection to the Settlement from the LWDA. Thus, Plaintiffs request the Court
8 finally approve the PAGA allocation in the \$100,000.00 with 75% being paid to the LWDA and
9 25% being distributed to the aggrieved employees.

10 **IX. CONCLUSION**

11 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
12 of the Class Action Settlement, award (1) Class Counsels' fees in the sum of \$313,333.33 and
13 litigation costs of \$16,673.46; (2) award the named Plaintiffs Class Representative Enhancement
14 Payments in the sum of \$10,000.00 each; (3) award \$14,000.00 to Apex Class Action, LLC, for
15 settlement administration services, and (4) approve the PAGA Payment of \$100,000.00 with a
16 \$75,000 of that sum paid to the LWDA and the remaining \$25,000.00 paid to the Aggrieved
17 Employees.

18
19 Dated: January 17, 2024

JAMES HAWKINS APLC
CLARK LAW GROUP



JAMES R. HAWKINS
GREGORY MAURO
MICHAEL CALVO
LAUREN FALK
AVA ISSARY
Attorneys for Plaintiffs

PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On January 17, 2024, I served on the interested parties in this action the following document(s) entitled:

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; ATTORNEYS' FEES, COSTS, ENHANCEMENT AWARD AND ADMINISTRATION COSTS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF CLASS COUNSEL WALTER L. HAINES, R. CRAIG CLARK AND JAMES HAWKINS.

DECLARATION OF MADELY NAVA OF APEX CLASS ACTION, LLC, IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

DECLARATION OF ILANA RAMOS IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR THE REQUESTED SERVICE AWARD

DECLARATION OF JAMES GREGORY CONQUEST IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS AND PAGA SETTLEMENT; JUDGMENT

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST

(See Service List Attached)

[XX] STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct

Executed on January 17, 2024, at Irvine, California

Alma Chavarin
Alma Chavarin

1 **McGUIREWOODS LLP**

2 Sabrina A. Beldner (SBN 221918)
Email: sbeldner@mcguirewoods.com

3 Andrew W. Russell (SBN 280669)
Email: arussell@mcguirewoods.com

4 Sarah Y. Oh (SBN 322164)
Email: soh@mcguirewoods.com

5 1800 Century Park East, 7th Floor
Los Angeles, CA 90067-1501

6 Telephone: 310.315.8200

7 Facsimile: 310.315.8210

MWhitney@mcguirewoods.com – Matthew Whitney

8 *Attorneys for Defendant*

9 *TRIPLE CANOPY, INC. and*

CONSTELLIS INTEGRATED RISK MANAGEMENT SERVICES, INC.

10 R. Craig Clark (SBN 129219)

cclark@clarklawyers.com

11 Alicja A. Urtnowski (SBN 321215)

aurtnowski@clarklawyers.com

12 **CLARK LAW GROUP**

3258 Fourth Avenue

13 San Diego, CA 92103

Telephone: (619) 239-1321

14 Facsimile: (888) 273-4554

clgadmin@celg.org – Jeff Vargas, Legal Assistant

15 Walter Haines (SBN 071075)

16 **UNITED EMPLOYEES LAW GROUP**

8605 Santa Monica Blvd #63354

17 West Hollywood, CA 90069

Telephone: (562) 256-1047

18 Facsimile: (562) 256-1006

Email: Whaines@uelglaw.com

19 *Attorneys for Plaintiff*

ILANA RAMOS

20
21 **Via LWDA Website Only**

Labor and Workforce Development Agency

22 Attn: PAGA Administrator

1515 Clay Street, Ste 801

23 Oakland, CA 94612

<http://www.dir.ca.gov/Private-Attorneys-General-Act>