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individually and on behalf of all others similarly situated.

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

DYLON W. CRONON, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

FFE TRANSPORTATION SERVICES, INC. dba
FROZEN FOOD EXPRESS, a Delaware
Corporation and DOES 1-50, inclusive,

Defendants.

CASE NO.: STK-CV-UOE-2022-6572
DEPT: 10C
JUDGE: HON. JAYNE LEE

**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; DECLARATION
OF PLAINTIFF CRONON**

Date: February 20, 2024
Time: 09:00 a.m.
Dept.: 10C

1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**

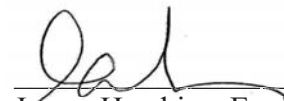
2 **NOTICE IS HEREBY GIVEN** that on February 20, 2024 at 9:00 a.m. or as soon thereafter as
3 the matter may be heard in Department 10C before the Honorable Jayne Lee of the San Joaquin
4 County Superior Court, located at 180 E. Weber Ave., 2nd Floor, Stockton, CA 95202, Plaintiff
5 Dylon Cronon (“Plaintiff”), by and through Plaintiff’s counsels of record, will and hereby moves
6 the Court for Final Approval of the Class Action Settlement Agreement and Release of Claims,
7 awarding attorneys’ fees, litigation costs, Class Representative Enhancement Payment, Settlement
8 Administration Costs, and entering final approval and judgment.

9 This Motion is made pursuant to Rule 3.769 of the California Rules of Court and Labor
10 Code section 2699(1). 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 (“Hawkins”), the declaration of Madely Nava of Apex Class Action, LLC, the declaration of
13 Plaintiff Dylon Cronon, the Class Action Settlement Agreement and Release of Claims (the
14 “Settlement Agreement”), attached to the Hawkins, argument of counsel, all papers and pleadings
15 filed in the action, and upon any further information or evidence requested by the Court at the time
16 of hearing on this Motion.
17

18
19 Dated: January 24, 2024

JAMES HAWKINS APLC

20
21 BY:



James Hawkins, Esq.
Gregory Mauro, Esq.
Michael Calvo, Esq.
Lauren Falk, Esq.
Ava Issary, Esq.
Attorneys for Plaintiff and the Proposed
Class

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This Court preliminary approved the settlement on or about September 12, 2023. (James
4 Hawkins Decl. “Hawkins”, **Exhibit A** - Preliminary Approval Order). Plaintiff Cronon
5 (“Plaintiff”), now respectfully request that this Court grant final approval of the settlement
6 agreement attached to the Hawkins Declaration as **Exhibit B**, which seeks to resolve claims
7 against FFE Transportation Services, Inc. dba Frozen Food Express, a Delaware corporation
8 (“Defendant” or “FFE”) in exchange for a non-reversionary Gross Settlement Amount of
9 (“GSA”) of Four hundred and Seventy Five Thousand Dollars and Zero Cents (\$475,000.00).

10 The Class Members overwhelmingly supported the Settlement, as there is a 100%
11 participation rate, with zero objections and zero opt outs resulting in 274 out of 274 Participating
12 Class Members. The *highest* Individual Settlement Amount to a Participating Class Member is
13 currently estimated to be approximately \$4,564,89, the *average* Individual Settlement Amount is
14 currently estimated to be approximately \$870.83, and the *lowest* Individual Settlement Amount is
15 currently estimated to be approximately \$17.36. These amounts are subject to employee-side tax
16 and withholdings. (Administrator Decl. of Madely Nava-hereinafter “Nava”, ¶ 15).

17 Plaintiff also moves for final approval of attorneys’ fees in the amount of \$158,333.33
18 which is one third of GSA. As will be demonstrated herein, Class Counsel’s attorney fee request
19 is supported using the percentage fee method and the lodestar method. Second, Plaintiffs move
20 for final approval of payment of the litigation costs in the amount of \$14,060.17, all of which
21 was incurred in litigating this matter. Third, Plaintiffs move for final approval of the Class
22 Representative Enhancement Payment to Plaintiffs in the sum of \$7,500.00, to compensate the
23 Class Representative for his service as the Class Representative and providing a general release
24 of their claims against Defendants – a release significantly greater than the Class Members
25 provided – and for the risks absorbed and time spent litigating the case. Plaintiff played a vital
26 role in representing Class Members in this case and spearheading the lawsuit to seek monetary
27 relief on behalf of all Class Members. Fourth, Plaintiff moves for final approval of the payment
28 of \$6,500.00 in administrative costs to Apex Class Action, LLC. Fifth, Plaintiff moves for final

1 approval of the \$50,000.00 PAGA Payment and the payment to the Labor and Work
2 Development Agency (“LWDA”) for its share of the PAGA Payment (\$37,500.00, which is 75%
3 of \$50,000.00; with the remaining \$12,500.00 payable to Aggrieved Employees).

4 This case required many hours of attorney and Plaintiff time who sought relief on behalf
5 of 274 potential class members within the State of California defined all current and former non-
6 exempt, non-driver employees who were employed by Defendant FFE at any time between July
7 29, 2018 and the earlier of either the Preliminary Approval Date, or August 10, 2023. (S.A. ¶
8 37).

9 This litigation involved the review and analysis of documents, policies, and practices, as
10 well as a full day of mediation. Most importantly, the Settlement and all its terms received
11 overwhelming support from Class Members, as there were no objections and no exclusions.
12 Therefore, Plaintiff respectfully request the Court grant final approval of the Settlement,
13 attorneys’ fees, litigation costs, Class Representative Enhancement Payment, Settlement
14 Administration Costs, and payment to the LWDA in the amounts preliminarily approved by the
15 Court and as fully disclosed to Class Members.

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

17 On July 29, 2022, Plaintiff submitted a letter to the California Labor Workforce
18 Development Agency (the “LWDA”) for civil penalties under the Private Attorney General Act
19 of 2004 (the “PAGA”), and also sent a letter to Defendant requesting the production of his
20 personnel and timekeeping records in order to further evaluate his wage and hour claims.
21 (Hawkins Decl., ¶ 3).

22 Plaintiff filed two actions against Defendant FFE and Does 1 through 50: a class action
23 filed on July 29, 2022, and a representative PAGA lawsuit filed on October 5, 2022. The two
24 actions allege class and representative PAGA claims, including: (1) failure to pay overtime
25 wages, (2) failure to provide meal periods, (3) failure to provide rest breaks, (4) failure to pay
26 final wages, (5) failure to pay timely wages, (6) failure to provide accurate wage statements, (7)
27 failure to reimburse for business expenses, (8) failure to pay vested vacation pay, (9) failure to
28 pay reporting time pay, and (10) unfair and unlawful competition pursuant to Business and

1 Professions Code §17200 et seq. Plaintiff also alleges related claims under PAGA in a separate
2 lawsuit. (Hawkins Decl., ¶ 4).

3 Defendant retained counsel and, on October 19, 2022, Defendant removed the Class
4 Action to the United States District Court for the Eastern District of California. Defendant then
5 filed a motion to compel arbitration and to dismiss the class claims, but the Parties stayed all
6 motion practice pending the completion of mediation and agreed that any settlement reached at
7 mediation would include a stipulation to remand the Class Action to state court. Defendants filed
8 an answer to the PAGA lawsuit, and the parties stipulated to stay proceedings pending mediation
9 of the Class and PAGA Action. In preparation for the mediation, the Parties informally
10 exchanged documents and information that allowed both sides to calculate the potential damages
11 and evaluate potential risk, including policies and procedures pertaining to each claim alleged,
12 and statistics relating to the number of current and former employees, number of shifts, pay
13 periods worked and other things. In this regard, Defendant provided a random 10% sampling of
14 timekeeping and payroll records of the 266 Class Members. This sampling of 27 employees'
15 records enabled both parties to take a deep dive into the claims. Additionally, during this
16 process, Plaintiff and his counsel analyzed, researched, and investigated the potential issues,
17 including matters related to the calculation of damages, trial, and appellate issues and risks.
18 (Hawkins Decl., ¶ 5).

19 On May 11, 2023, Plaintiff and Defendant FFE participated in mediation before
20 Honorable William Pate, a retired Judge who served in the San Diego Superior Court Civil
21 Department and now serves as mediator on wage and hour class action cases among other
22 matters. The matter resolved pursuant to a mediator's proposal. The Parties accepted the
23 mediator's proposal and memorialized the terms of the settlement in a long-form Settlement
24 Agreement. (Hawkins Decl., ¶ 6). The Parties now seek the Court's preliminary approval of the
25 Settlement.

26 In reaching the proposed settlement, Plaintiffs counsel's negotiation efforts took into
27 consideration relevant factors such as the size of the class, the information, data, and documents
28 obtained in the litigation and/or otherwise exchanged pursuant to the mediation privilege; the

1 experience of the named Plaintiffs; the strengths and weaknesses of the case; the uncertain
2 outcome and risk of litigating complex actions; the time and expense in litigating a case through
3 trial; Defendants’ defenses; and the non-reversionary nature of the settlement. (Clark Decl., ¶
4 13).

5 **1. The Settlement Provides Reasonable Compensation to Class Members**

6 As a result of the mediation, the parties agreed to settle this matter for a Gross Settlement
7 Amount (“GSA”) of \$475,000.00 (Hawkins Decl., ¶ 8, Ex. B-Settlement Agreement ¶ 49). Based
8 on their own respective independent investigations and evaluations, and after taking into account
9 the sharply disputed factual and legal issues involved in this matter, the risks attending further
10 prosecution of the case, and the monetary benefits received under the Settlement despite the
11 questionable nature of the claims, Plaintiff’s counsel is of the opinion that Settlement for the
12 consideration and on the terms set forth in the Settlement Agreement remains fair, reasonable and
13 adequate and is in the best interests of the Class Members. (Hawkins Decl., ¶¶ 8-10).

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

18 Accounting for the risks of continued litigation and impediments to discovery, Plaintiff
19 determined that a settlement amounting to \$475,000.00 was fair and reasonable and the court
20 preliminarily agreed. (Hawkins Decl., ¶¶ 11-21). *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212
21 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14%
22 of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga.
23 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four*
24 *Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v.*
25 *Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that
26 settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial
27 approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re*
28 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8%

of estimated damages).¹ (*Id.*)

III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS' RESPONSE

A. Terms of the Settlement

The GSA is (\$475,000.00). This amount includes, the Settlement Administration Costs of \$6,500.00; the Class Representative Enhancement Payment of up to \$7,500.00 to Plaintiff; Court-approved attorneys' fees up to \$158,333.33, litigation costs to Class Counsel in the amount of \$14,060.17; and PAGA penalties of \$500,000.00 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 \$238,606.50. (Nava Decl., ¶ 14).

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 as defined in the Settlement. (Hawkins Decl., Ex. B- Settlement Agreement ¶ 30).

C. The Class Members Support the Settlement – Zero (0) Objections and Zero (0) Opt-Outs

¹ 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.").

1 On September 12, 2023, the Court granted Preliminary Approval of the Settlement,
2 conditionally certified the class for settlement purposes, appointed Apex Class Action, LLC to act
3 as the administrator, approved the Notice to be sent to the Class, and directed that the Notice be
4 mailed to the Class via U.S. First Class Mail. (Hawkins Decl., Ex. A- Order Granting Preliminary
5 Approval). On or about September 26, 2023, Apex mailed the Notices to 274 Class Members.
6 (Nava Decl., ¶7). Out of the 274 Notices, only 16 were deemed undeliverable after attempts to
7 ascertain the addresses. (Nava Decl., ¶¶ 7-11). As a result of the mailing, there is a 100%
8 participation rate and 274 Class Members will be mailed a settlement check. (*Id.* ¶ 13).

9 All settlement checks to Class Members and/or Aggrieved Employees that remain
10 uncashed after one hundred eighty (180) days of the mailing by the Claims Administrator, or for
11 those Class Members and/or Aggrieved Employees whose Notice Packets were deemed
12 undeliverable, shall be transmitted by the Settlement Administrator to the State Controller of
13 California's Unclaimed Property Fund, to be held there for the benefit of such class members under
14 California's escheatment laws. (Settlement Agreement ¶ 75).

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

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

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

23 In deciding whether to approve a class settlement, a court evaluates whether the proposed
24 settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
25 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. Of S.F.* (9th Cir. 1982)
26 688 F.2d 615, 625). A court enjoys broad discretion to make its fairness determination. *Dunk*, 48
27 Cal. App. 4th at 1801. However, "a presumption of fairness exists where: (1) the settlement is
28 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 no Class Members excluded themselves from the settlement, **resulting in a 100% participation rate from the Class**. (Nava Decl., ¶ 13). Thus, the proposed Settlement is entitled to the presumption that it is fair and in all other respects proper and should be finally approved.

V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS

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

Class Counsel applies for an award of attorneys’ fees in the sum of \$158,333.33 of the GSA, and litigation costs of \$14,060.17 (Hawkins Decl., ¶¶ 28-31, Ex. C). When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method survives in California class action cases.” 1 Cal.5th 480, 506 (2016), in stating:

The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging

1 the litigation—convince us the percentage method is a valuable tool that should not
2 be denied our trial courts.

3 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34
4 (1977) (“when a number of persons are entitled in common to a specific fund, and an action
5 brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of
6 that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v.*
7 *Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the
8 benefit of all parties, the trial court acts within its equitable power to prevent the other parties’
9 unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir.
10 1993) (the percentage of the fund method for calculating attorney’s fees more accurately reflects
11 the results achieved for the putative class than the lodestar method and “establishes reasonable
12 expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages
13 early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*,
14 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in
15 common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards
16 counsel for success and penalizes it for failure.’”).²

16 The purpose of the common fund/percentage approach is to “spread litigation costs
17 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
18 burden alone.” *Vincent, supra*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d
19 162, 167, the Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a
20 fund from which others derive benefits may require those passive beneficiaries to bear a fair share
21 of the litigation costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th
22 105, 110, the California Supreme Court recognized that the common fund doctrine has been
23 applied “consistently in California when an action brought by one party creates a fund in which
24 other persons are entitled to share.” The reasons for applying the common fund doctrine include:

25
26
27 ² *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools
28 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”).

1 “...fairness to the successful litigant, who might otherwise receive no benefit because his recovery
2 might be consumed by the expenses; correlative prevention of an unfair advantage to the others
3 who are entitled to share in the fund and who should bear their share of the burden of its recovery;
4 encouragement of the attorney for the successful litigant, who will be more willing to undertake
5 and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured
6 that he will be properly and directly compensated should his efforts be successful.” *Id.* Because
7 there is a defined and clearly traceable benefit to the Class, the Court can base an award of
8 attorneys’ fees using a ‘common fund’ approach to compensate Class Counsel.

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

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

15 The requested fee falls in the mid-range of percentage class fee awards, which generally
16 range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking
17 complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates
18 Class Counsel for their efforts, as well as the result achieved for the benefit of the Class. Numerous
19 courts in California routinely approve fee requests equal to or greater than 35% of the common
20 fund. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011)
21 (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS
22 (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement); *Rippee v.*
23 *Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40%
24 fee on a \$3.75 million wage and hour class action settlement). In fact, the Sacramento County
25 Superior Court has awarded fees of 35% of the common fund in wage and hour class actions.
26 (*McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269; *Uribe v. EcoGuard Pest*
27 *Management, Inc.*, Case No. 34-2021-00300650; *Arroyo v. Epic Home Solar*, Case No. 34-2021-
28 00310634; *Blair v. Clark Wagaman Designs*, Case No. 34-2021-00313156).

1 In short, Class Counsels' fee request of \$158,333.33 (33.33% of the common fund) is in
2 line with awards in similar cases in California and demonstrates that Class Counsels' fee request
3 is consistent with market rates and is reasonable.

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

5 Class Counsels' fee request is reasonable when calculated using the lodestar method.
6 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
7 spent on the case and the reasonable hourly compensation of the attorney. *Serrano*, 20 Cal. 3d at
8 48. The court then may enhance this lodestar figure by a "multiplier" to account for a range of
9 factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
10 success achieved. *Id.* at 49; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer*
11 *v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001), ["[t]here is no...rule limiting the factors
12 that may justify an exercise of judicial discretion to [adjust the] lodestar"].

13 As of the date of filing, Class Counsel worked approximately 224.40 combined
14 documented hours on this case. Thus, the total lodestar for Class Counsel is approximately
15 **\$177,675** which is in excess of the fees Class Counsel is requesting. (Hawkins Decl., ¶ 28-31). All
16 of the work and tasks performed by Class Counsel were reasonable and necessary to the
17 prosecution of this case. (*Id.*).

18 **3. Class Counsel's Hourly Rates are Reasonable**

19 Class Counsels' hourly rates are between \$200 and \$950 and are in line with rates typically
20 approved in wage and hour class action litigation and which rates have been approved by Courts
21 in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego
22 County Superior Courts. (Hawkins Decl., ¶27); *Children's Hosp. and Med. Ctr. v. Bonta*, 97
23 Cal.App.4th 740, 746 (2002) (noting rates were reasonable where they were "within the range of
24 reasonable rates charged by and judicially awarded comparable attorneys for comparable work").

25 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
26 experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095.
27 When determining a reasonable hourly rate, courts may consider factors such as skill and
28 experience, the nature of the work performed, the relevant area of expertise and the attorney's

1 customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.
2 Class Counsels' skill and experience support their hourly rates. Our practices are limited
3 exclusively to litigation, focusing on the representation of employees in wage and hour and
4 consumer class action matters. (Hawkins Decl., ¶ 27). As prominent attorneys in the field of wage
5 and hour class action litigation, Class Counsel continually monitors the prevailing market rates
6 charged by both defense and plaintiff law firms and set the billing rates of their attorneys and
7 paralegals to be consistent with the prevailing market rates in the private sector for attorneys and
8 staff of comparable skill, qualifications and experience. Other wage and hour attorneys working
9 as class counsel before California courts charge comparable if not higher rates. Therefore, as they
10 are in line with those of the relevant community, Class Counsels' hourly rates are reasonable.

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

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

17 Class Counsel expended a combined total of approximately 224.40 hours on this case.
18 The work performed to achieve a settlement that will provide valuable consideration to the Class,
19 is summarized by Class Counsel in the declaration submitted herewith. (Hawkins Decl., ¶¶ 28-
20 31); *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699 (2014) ("Because time records are
21 not required under California law ..., there is no required level of detail that counsel must
22 achieve.") (internal quotations omitted). All tasks and work performed were reasonable and
23 necessary to the prosecution of this case. The work performed was justified in light of the result
24 achieved.

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

26 Class Counsel seeks reimbursement of the litigation costs and expenses of \$14,060.17. These
27 costs were reasonable and necessary to prosecute this case and the results achieved and are fair,
28 and reasonable. (Hawkins Decl., ¶¶ 30-31, Ex. C).

1
2 **VI. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS ARE**
3 **REASONABLE**

4 Class Counsel seeks approval of a \$7,500.00 Class Representative Enhancement Payment
5 to the named Plaintiff/Class Representative. The requested enhancement award is reasonable in
6 light of the general release of all claims Plaintiff agreed to, greater than the release given by Class
7 Members, the benefits Plaintiff conferred upon the entire Class resulting in payments to all Class
8 Members, the time spent assisting counsel with the investigation and prosecution of these claims
9 and consenting to the proposed Settlement. Furthermore, in pursuing this action on behalf of the
10 Class, Plaintiff risked a judgment for attorneys' fees and costs in the event this matter had been
11 lost. (Hawkins Decl., ¶¶ 32-33; *See also* declaration of Plaintiff Cronon filed concurrently
12 herewith)

13 Courts routinely approve service payments, or incentive awards, to compensate named
14 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
15 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers*
16 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
17 representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on the
18 foregoing, the \$7,500.00 Class Representative Enhancement Payment is fair, appropriate, and
19 justified as part of the overall settlement.

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

21 The Parties agreed to hire Apex Class Action, LLC as the administrator, and the Court
22 approved this choice. The Administrator was responsible for formatting, printing and mailing the
23 Notice. It was also responsible for updating addresses and re-mailing Notices returned as
24 undeliverable, responding to Class Member inquiries, answering questions from Counsel for the
25 Parties, and providing a declaration to document its duties and responsibilities under the
26 settlement. Plaintiff now request that the Court approve the \$6,500.00 fee to Apex Class Action,
27 LLC for services rendered and to be rendered. (Nava Decl., ¶ 18). Following the grant of final
28 approval, the Administrator's duties will continue in order to calculate and mail the Individual

1 Settlement Payment checks to Class Members, perform tax reporting obligations, disburse other
2 payments as ordered by the Court, and perform such other duties as set forth in the Settlement
3 Agreement. The fee of \$6,500.00 for services rendered and to be rendered is fair and reasonable
4 and should be granted.

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

6 The PAGA payment of \$50,000.00 with 75% of \$50,000.00 to the LWDA and 25% to
7 the aggrieved employees is reasonable under the circumstances. The Parties negotiated a good
8 faith amount for PAGA penalties. The PAGA penalties allocation not the result of self-interest at
9 the expense of other Class Members. The LWDA was also provided notice of the Settlement with
10 the concurrently filing of the preliminary approval motion and the instant motion. Plaintiffs did
11 not receive a response or objection to the Settlement from the LWDA. Thus, Plaintiff requests the
12 Court finally approve the PAGA allocation in the amount of \$50,000.00 with 75% being paid to
13 the LWDA and 25% being distributed to the aggrieved employees.

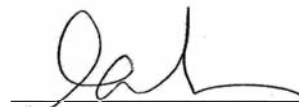
14 **IX. CONCLUSION**

15 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
16 of the Class Action Settlement, award (1) Class Counsels' fees in the sum of \$158,333.33 and
17 litigation costs of \$14,060.17; (2) award the named Plaintiff Class Representative Enhancement
18 Payment in the sum of \$7,500.00; (3) award \$6,500.00 to Apex Class Action, LLC, for settlement
19 administration services, and (4) approve the PAGA Payment of \$50,000.00 with a \$37,500 of that
20 sum paid to the LWDA and the remaining \$12,500.00 paid to the Aggrieved Employees.

21
22 Dated: January 23, 2024

JAMES HAWKINS APLC

23
24 BY:



James Hawkins, Esq.
Gregory Mauro, Esq.
Michael Calvo, Esq.
Attorneys for Plaintiff and the Proposed
Class

PROOF OF SERVICE

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 24, 2024, I served the following document(s) described as:

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; DECLARATION OF PLAINTIFF CRONON

DECLARATION OF JAMES HAWKINS IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS AND PAGA SETTLEMENT

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

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

on interested parties,
[] by placing [] the original [] a true copy thereof enclosed in a sealed envelope addressed as follows:

Dessi N. Day, Esq.
GREENE & ROBERTS
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Attorneys for Defendant
FFE TRANSPORTATION SERVICES, INC.

Via LWDA Website Only
Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail 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. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

[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 24, 2024, at Irvine, California

Alma Chavarin
Alma Chavarin