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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MADERA

DARCEL CELESTE NAVARRETTE and ELIZABETH QUIROGA CARRERO, individually and on behalf of all others similarly, Plaintiffs, v. INTERSTATE MANAGEMENT COMPANY, LLC dba LA QUINTA INN & SUITES BY WYNDHAM MADERA, a Delaware Limited Liability Company; AIMBRIDGE HOSPITALITY, LLC, a Delaware Limited Liability Company; and DOES 1-10, inclusive, Defendant.	CASE NO.: MCV087491 [Assigned for all purposes to Hon. Eric J. LiCalsi; Dept.44] **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT** Date: November 18, 2025 Time: 8:30 a.m. Dept.: 44 Complaint Filed: August 12, 2022

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Darcel Celeste Navarette and Elizabeth Quiroga Carrero ("Plaintiffs" or "Class Representatives") respectfully moves for final approval of a $2,000,000.00 non-reversionary, Gross Settlement Fund ("GSF") memorialized in the Parties' Class and PAGA Action Settlement Agreement ("Agreements", "Settlement Agreement" or "S.A.") which after deductions for attorneys' fees and costs, the Class Representative Service Awards, Settlement Administration fees, and the payment to the LWDA, will provide an estimated Net Settlement Fund ("NSF") to the 4,230 participating Class Members of approximately $1,444,337.83 as follows:

	Total Amount
Gross Settlement Fund	$2,000,000.00
Attorneys' Fees (1/3 of GSA)	$700,000.00
Actual Litigation Costs	$27,662.17
Administrator Costs	$33,000.00
PAGA Penalty	$100,000.00
Class Representative Service Awards	$20,000.00
Net Class Settlement Amount	**$1,144,337.83**[1]

The Settlement was preliminarily approved on May 29, 2025. On August 15, 2025 the Court-approved Notice Packet (consisting of the Notice of Class Action and PAGA Settlement, Change of Address form, and pre-printed return envelope) was sent to 4,231 Class Members via U.S. First Class Mail.[2] Through these means, the Notice Packet informed the Class Members of their rights and benefits under the Settlement, including their estimated Settlement Payments if they did not request exclusion, and the September 29, 2025 deadline to dispute workweeks, request exclusion, or object to the Settlement.[3] Following the September 29, 2025 deadline, **zero objections have been raised and only one (1) Class Member opted out**. These results demonstrate the overall tremendous support for this Settlement which represents a 99.97% participation rate.[4] As a result of the successful Notice campaign, the compendium of information

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[1] Declaration of Stacey Shim on behalf of APEX Class Action LLC, ("Shim Decl.") ¶ 15.
[2] *Id.,* ¶ 7.
[3] *Id.,* ¶¶ 12-13.
[4] *Id.,* ¶¶ 12-14.

available to the Parties and their counsel, and Class Counsel's and Class Members' support for this Settlement as fair and reasonable, it now merits final approval.

II. RELEVANT PROCEDURAL HISTORY AND FACTUAL BACKGROUND

For a discussion of relevant procedural history and facts regarding this case, please see the Declaration of James Hawkins In Support of Final Approval ("Hawkins Decl.") at paragraphs 2 to 10.

III. SUMMARY OF SETTLEMENT AND NOTICE PROCESS

Under the preliminarily-approved Settlement, Defendant will pay $2,000,000.00 ("Gross Settlement Fund" or "GSF") for the release of Class Members' claims, which are only those claims actually alleged in the action or that could have been alleged based on the facts stated in the operative Complaint, consistent with principles of *res judicata.* (*See, Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106 (9th Cir. 2018).[5] Further key terms include:

"Class Members" means "all persons who have been employed by Defendant as non-exempt employees or equivalent positions, however titled, in the state of California during the Class Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification) at any time from August 12, 2019 through December 31, 2019 and February 1, 2023 through March 4, 2025." (the "Class Period"). (Settlement Agreement ¶I.5,6).

Class Counsel Award. The Settlement provides for an attorneys' fees and costs award of 35% of GSF (i.e. $700,000.00), a typical percentage[6] in the resolution of common fund wage and hour cases. Class Counsel have devoted numerous hours to and faced significant risk in the prosecution of these matters and, more importantly, made a substantial fund available to a large number of otherwise-underrepresented, low-paid workers. Class Counsel also incurred ordinary

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[5]This Motion occasionally cites federal case law and commentaries thereon which construe authority for conditional class certification and settlement approval in California courts. The California Supreme Court has authorized and urged California's trial courts to use federal resources for guidance in considering class issues. *Vasquez v. Superior Court,* 4 Cal.3d 800, 821 (1971); *Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

[6]*See, e.g., Davis v. The Money Store, Inc.*, Case No. 99AS01716 (Sacramento Super. Ct. 2000) (33 1/3 % fee award); *Haitz v. Meyer, et al*., No. 572968-3 (Alameda Super. Ct., 1990) (45% fee award); *Ibrahimi v. Walgreen*, (Contra Costa Super. Ct. 2019) Case No. MSC16-02120) (35% fee award in wage and hour class action); *Rippee v. Boston Mkt. Corp*., 2006 U.S. Dist. LEXIS 101136 (S.D. Cal. Oct. 10, 2006) (40% fee award); Exhibit "D" (Compendium of Settlement Item Awards).

litigation costs over the past 3 years and now seeks costs of $27,662.17. Notably, this amount does not account for additional future expenses in overseeing the settlement process, making appearances, filing court documents, ensuring claims administration compliance with this Court's orders, responding to Class Members, etc. Since costs in the amount of $27,662.17 are reasonable and served to benefit the Class, they warrant reimbursement. (Settlement Agreement ¶III.24).

PAGA Payment Amount. The Settlement also provides for $100,000.00 to be paid to settle any and all claims for which penalties under PAGA may be sought or are otherwise available. Of the $100,000.00 PAGA Payment Amount, 75% will be paid to the LWDA in the amount of $75,000.00. The remaining 25% will be paid to the Aggrieved Employees in the amount of $25,000.00. (Settlement Agreement ¶III.19).

Class Representative Service Award. The Settlement also provides for an Service Award as a service payment to the Plaintiffs for their role as Class Representatives in the amount of $10,000.00 each (totaling $20,000.00) for their time, risk and effort in bringing the lawsuit, representing the large Class, and in consideration for the claims released.[7] The proposed $20,000.00 Service Award is also reasonable given the minimal impact these amounts will have on any settling Class Member's level of recovery. (Settlement Agreement ¶III.23).

Settlement Administration Costs. The settlement administration costs of $33,000.00 are reasonable given the size of the Class and the work required to send the Notice, process settlement checks, set up and administer a settlement website, communicate extensively with Class Members and Class Counsel, and perform post Final Approval administration.[8] (Settlement Agreement ¶III.25).

Results of the Notice Process. In accordance with the Court's granting of preliminary approval, the Settlement Administrator sent the Notices by first class mail to all Class Members at their last known addresses, updated using the National Change of Address ("NCOA") Database. As detailed below, when Notices were returned by the post office, the claims administrator

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[7] Hawkins Decl., ¶ 30; *See generally* Declaration of Darcel Celeste Navarette In Support of Final Approval ("Navarette Decl.") and Declaration of Elizabeth Quiroga Carrero In Support of Final Approval ("Carrero Decl.").

[8] Shim Decl., ¶ 19.

researched further, performed "skip traces" and then, when possible, re-mailed those Notices to better mailing addresses. Only 86 Notice Packets out of the 4,231 Notices were deemed undeliverable – an excellent result in wage and hour actions.[9] The deadline for Settlement Class Members to exclude themselves or object to the Settlement was September 29, 2025. **Only one Class Member opted out and zero Class Members objected, resulting in 99.97% participation**.[10]

The Participating Class Members are expected to receive an estimated, average Individual Settlement Payment of $270.53, with the highest Individual Settlement Payment currently estimated to be $842.75 and the lowest estimated to be $9.36.[11] The average PAGA Payment to the eligible Aggrieved Employees is currently estimated to be $9.89, with the highest PAGA Share currently estimated to be $19.20 with the lowest estimated to be $0.52.[12] These are significant individual recoveries, particularly in light of the risks of litigation.

IV. THE SETTLEMENT MERITS FINAL APPROVAL

When evaluating a class action settlement under California Code of Civil Procedure § 382 for final approval, a court's inquiry focuses upon whether the settlement is "fair, adequate and reasonable." *Wershba v. Apple Computer Inc.*, 91 Cal.App.4th 224, 244-245 (2004); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). A settlement is "fair, adequate and reasonable" and, therefore, merits final approval when "the interests of the class are better served by the settlement than by further litigation." *Manual for Complex Litigation* (4th ed. 2008) § 21.61, 462 ("*Manual*"). These conditions are met here.

While the Court possesses "broad discretion" in determining whether a proposed class action settlement is fair, the Court's inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiation Parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Dunk*, 48 Cal.App.4th at 1801 (quoting *Officers for Justice Civil Serv.*

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[9] *Id.,* ¶¶ 7, 10.
[10] *Id.,*¶¶ 11-12, 14.
[11] *Id.,* ¶ 16.
[12] *Id.* ¶ 18.

Comm'n, 688 F.2d 615, 625 (9th Cir. 1982)). A court's approval of a class action settlement will only be reversed for a clear abuse of discretion. *Dunk*, 48 Cal.App.4th at 1802.

A. <u>THE SETTLEMENT IS PRESUMED FAIR</u>

"[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802 (citing Newberg & Conte*, Newberg on Class Actions (2002)* § 11.41, pp. 11-91). Here, the Settlement clearly meets these points and, as this Court noted in its preliminary approval Order, it is, thus, presumed fair.

The Settlement was reached through arm's-length negotiations. On June 26, 2024, the Parties participated in mediation to reach a global class settlement of the Class and PAGA Actions. While the parties were not successful in resolving the Lawsuits during the mediation, subsequent negotiations facilitated by mediator Kevin Barnes, Esq., have resulted in the class-wide resolution of this matter to fully resolve the Class and PAGA Action.[13] Finally, as discussed *infra*, **zero Class Members objected, and one opted out**. Accordingly, the presumption that the Settlement is fair applies. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09–00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support the conclusion that the settlement process was not collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in

[13] Hawkins Decl., ¶¶ 5-6.

mediation "tends to support the conclusion that the settlement process was not collusive"). At all times, the Parties' negotiations were adversarial and non-collusive.

B. AS THIS COURT PREVIOUSLY FOUND, THE RELEVANT CRITERIA SUPPORT FINAL APPROVAL

California Courts consider several factors in deciding whether to grant final approval of a class action settlement, including (1) the amount offered in settlement, (2) the risks inherent in continued litigation, (3) the complexity, expense, and likely duration of the litigation absent settlement, (4) the extent of discovery completed and the stage of the proceedings when settlement was reached, (5) the experience and views of class counsel, and (6) the reaction of class members. *Dunk*, 48 Cal.App.4th at 1801; *Wershba*, 91 Cal.App.4th at 244-45; *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 119 (2008). Here, evaluation on each of these factors favors final approval of the Settlement.

1. The Value of the Settlement and the Risks Inherent in Continued Litigation Favor Final Approval

When evaluating the Settlement for fairness, the Court should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation. In making a fairness determination, "[t]he most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." *Kullar*, 168 Cal.App.4th 116, 128 (2008). This analysis often includes a comparison of the amount of the proposed settlement with the value of the damages potentially recoverable if successful in further litigation, appropriately discounted for the risk of not prevailing. *Dunk*, 48 Cal.App.4th at 1801-1802; *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 617-619 (N.D. Cal. 1979). As this Court has previously determined, the Settlement is appropriate under the *Dunk/Kullar* analysis. Plaintiffs estimated the maximum theoretical exposure to be in the range of approximately $4,134,451.29.[14]

Given the maximum potential damages, the settlement sum of Two Million Dollars and Zero Cents ($2,000,000.00) is reasonable considering the substantial risks entailed by this case. Plaintiffs' counsel estimates a 50 percent likelihood of obtaining and maintaining certification of

[14] Declaration of Shoham Solouki In Support of Final Approval ("Solouki Decl.,") ¶ 15.

Plaintiffs' claims, which reduces the value of these claims. Plaintiffs' counsel further estimates that there is a 50 percent chance that Plaintiffs will prevail at trial on their claims, further reducing the value of the claims. *Solouki Decl.* ¶ *17*.

Defendant, on the other hand, strongly contends that its policies and practices do not violate any laws and that it complied with all applicable laws. Specifically, Defendant maintains that Plaintiffs' claims and class members were not properly paid for all hours worked is factually incorrect. It is Defendant's position that there would be no liability for unpaid wages and overtime, and therefore, the derivative claims also fail.

Defendant further contends that it provided meal and rest breaks as required by law and is not required to ensure that employees took every meal and rest period made available to them. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012). Even if the data were to show that meal periods were not taken, time records alone cannot establish a meal break violation under California law. *See Donohue v. AMN Servs., LLC*, 29 Cal. App. 5th 1068, 1088 n. 25, as modified (Dec. 28, 2018), review granted, 2019 WL 1388808, at *1 (Cal. Mar. 27, 2019) (finding that "an employer's time records may . . .[only] reflect a section 226.7 violation" in the class certification context, and not on the merits either at trial or on summary judgment); *Brown v. Federal Express Corp.*, 249 F.R.D. 580, 587 (C.D. Cal. 2008) (time records could not prove break claims as they would not provide reason for missed breaks).

Moreover, Defendant contends that Plaintiffs would not obtain class certification on their claims, particularly because the claims would require an individualized inquiry. *See Koval v. Pacific Bell Telephone Co*., 232 Cal. App. 4th 1050, 1062 (2014) (denying certification and holding that plaintiff's failure to demonstrate that allegedly unlawful policies were consistently applied "create[d] a shifting kaleidoscope of liability determinations that render this case unsuitable for class action treatment"); *Dailey v. Sears, Roebuck & Co.*, 214 Cal. App. 4th 974, 1002 (2013) (denying class certification of meal period and rest break claims of employees alleging that they did not regularly take uninterrupted meal and rest breaks where there was no evidence of a uniform policy showing that the Company required the employees to forego breaks). In such an event, there would be no recovery for Class Members at all. A discount was required at this stage of the litigation for settlement purposes based on these risk factors.

There are therefore significant risks that this Court may (i) deny class certification, (ii) fail to award PAGA penalties, and (iii) rule against Plaintiff on the merits. The settlement obviates such risks. Moreover, continued litigation would very likely reduce and substantially delay recovery by Class Members. In contrast, because of the proposed Settlement, Class Members will receive timely relief and avoid the risk of an unfavorable judgment. *Solouki Decl.* ¶¶ 16-17.

Furthermore, while Plaintiffs are confident in the merits of the case, a legitimate controversy exists as to each cause of action. Plaintiffs also recognize that proving the amount of wages due to each individual Class Member would be an expensive, time-consuming, and extremely uncertain proposition. *Solouki Decl. ¶ 18*.

In sum, when the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are balanced against the merits of Plaintiffs' claims, it is clear that the Gross Settlement Amount is fair, adequate, and reasonable. *Solouki Decl. ¶ 19*.

C. THE COMPLEXITY, EXPENSE AND LIKELY DURATION OF CONTINUED LITIGATION SUPPORT APPROVAL

In evaluating for fairness, the Court should weigh the benefits of settlement against the expense and delay involved in achieving an equivalent or even more favorable result at trial. *Young v. Katz*, 447 F.2d 431, 433 (5th Cir. 1971); *Kullar*, 168 Cal.App.4th 116, 120 (2008). As California jurists have recognized, there exists "an overriding public policy favoring settlement of class actions." *Ferguson v. Lieff, Cabraser, Heimann & Bernstein*, 30 Cal.4th 1037, 1054 (2003) (citing *Franklin v. Kayrpo Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989) ("public policy favor[s] the compromise and settlement of disputes")). The alternative to a class action, namely numerous individual actions, could tax private and judicial resources for years. Given the relatively modest, though not inconsequential, amount of damages individual Class Members allegedly incurred, it would be uneconomical to secure individual legal representation, even for those with the resources to do so. But, here, the Settlement provides *all* Class Members, regardless of their means, the opportunity of monetary recovery in a prompt and efficient manner, without the risk of the Court denying class certification and/or finding no liability, and these workers recovering nothing at all.

Class Counsel also considered that, even if Plaintiffs prevailed, on both class certification and liability, the remaining processes could be lengthy and costly, potentially including appeals. As such, even a successful judicial resolution at the trial court level can be just the beginning of a lengthy, expensive process, stalling payments to class members for years. This judicial purgatory is compounded by the risk of adverse appellate rulings, which would remand the action to the trial court for further litigation, possibly with negative precedent.[15] The complexity, expense, and delay of continued litigation in this matter supports final approval of the Settlement.

D. <u>THE DISCOVERY AND FACTUAL INVESTIGATION SUPPORT APPROVAL</u>

The Settlement comes at a point in the litigation where counsel for Plaintiffs and Defendant had clear views of the strengths and weaknesses of their respective cases. "[T]he extent of discovery completed and the stage of the proceedings" are factors courts consider in determining the fairness, adequacy and reasonableness of a settlement." *Dunk*, 48 Cal.App.4th at 1794. Class Counsel conducted extensive pre-filing due diligence and engaged in informal discovery. The parties also engaged in substantial discovery, including Defendant's production of all of its written wage and hour policies, and data consisting of time records, payroll records, and other data for employees of Defendant, including tens of thousands of lines of data and hundreds of pages of other employment related documents. Undoubtedly, the parties have thoroughly investigated, and are sufficiently knowledgeable of the facts to form educated assessments regarding their respective positions and the value of the case.[16]

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[15] *See*, *e.g.*, *Chau v. Starbucks Corp.*, 174 Cal.App.4th 688 (2009) (appellate court reversed an $86 million restitution award to a certified class of hourly employees).

[16] Hawkins Decl., ¶¶ 11-17; Solouki Decl., ¶¶ 39-40.

All of this was confirmed by the extensive mediation, during which all of the claims and defenses were thoroughly argued and vetted by the experienced mediator, which led directly to the mediator's proposal that is the basis of the agreed settlement.

E. THE EXPERIENCE AND VIEWS OF COUNSEL FAVOR FINAL APPROVAL

Class Counsel supports the Settlement as fair, reasonable, and adequate, and believes it in the best interest of the Class as a whole.[17] Class Counsel has substantial experience prosecuting complex litigation and/or class action lawsuits, has prosecuted a multitude of such cases involving the same issues as presented here.[18] As discussed above, Class Counsel is intimately familiar with the litigation, having conducted extensive investigation and negotiation on behalf of the class. The endorsement by well-informed and qualified counsel of a settlement as fair, adequate, and reasonable is entitled to significant weight. *Dunk*, 48 Cal.App.4th at 1802; *Ellis Naval Air Rework Facility*, 87 F.R.D. 15 (N.D. Cal. 1980); *Boyd*, 485 F. Supp 610, 617 (N.D. Cal. 1979).

F. THE CLASS MEMBERS' REACTION FAVORS FINAL APPROVAL

Finally, when determining if a settlement is reasonable, a court looks to "the reaction of class members to the proposed settlement." *Dunk*, 48 Cal.App.4th at 1801; *Wershba*, 91 Cal.App.4th at 244-245; *Kullar*, 168 Cal.App.4th at 119. Here, Class Members' response to the Settlement has been favorable; there is only one opt out and zero objections. The lack of any objections and a single opt-outs speaks volumes about the fairness, reasonableness, and adequacy of this Settlement. Class Members' reaction thus shows tremendous support for the Settlement. Accordingly, the Settlement as a whole is presumed to be fair, reasonable, and adequate, and the Court should grant final approval of the Settlement in its entirety. *Dunk*, 48 Cal.App.4th at 1802.

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[17]"When approving class action settlements, the court must give considerable weight to class counsel's opinions due to counsel's familiarity with the litigation and its previous experience with class action lawsuits." *Alberto v. GMRI, Inc.*, *Not Rpt'd in* F. Supp. 2d, 2008 WL 4891201 (E.D. Cal. 2008) (*citing Officers for Justice*, 688 F.2d at 625 and *In re Washington Public Power Supply System Securities Litigation*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989)).
[18]Hawkins Decl., ¶¶ 21-25; Solouki Decl., ¶¶ 41-50.

V. THE COURT-ORDERED NOTICE PROGRAM IS CONSTITUTIONALLY SOUND AND HAS BEEN FULLY IMPLEMENTED

California statutory and case law vests the Court with discretion in fashioning an appropriate notice program. *Cal. Civ. Code* § 1781; *Cartt v. Superior Court*, 50 Cal.App.3d 960, 973-974 (1975). To protect the rights of absent class members, the parties must provide the class with the best notice practicable, but due process does not require actual notice to parties who cannot reasonably be identified. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-812 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (U.S. 1974); *Manual* § 21.311, n. 882 at 432; *Cal. Rules of Ct., Rule* 3.766(d).

The Court-approved Notice program met this standard and has now been fully implemented. The Settlement Administrator mailed the Notice Package to the entire class on August 14, 2025. Only 86 Notice Packets out of the 4,231 mailed Notices were deemed undeliverable. This is unquestionably an excellent result.[19] Moreover, the lack of objections and the single opt-out request to the Settlement demonstrates that the Class does overall support the Settlement. It is a good result for those Class Members who were harmed.

VI. AN AWARD OF ATTORNEYS' FEES AND COSTS IS APPROPRIATE

A. A COMMON FUND FEE AWARD IS WARRANTED

Public policy promotes approval of fee requests since "[t]he function of an award of attorney's fees is to encourage the bringing of meritorious…claims which might otherwise be abandoned because of the financial imperatives surrounding the hiring of competent counsel." *City of Riverside v. Rivera*, 477 U.S. 561, 578 (1986) (internal quotation marks and citations omitted). Additionally, attorneys' fees are awarded based on the value of the common benefit made available to the class, regardless of whether the settlement contains a reversion provision. *Williams v. MGM-Pathe Communs. Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997); *Boeing Co. v. Van Gemert*, 44 U.S. 472, 480-81 (1980). In this case, there will be no reversion of any kind to the Defendant, further rendering the fees request appropriate. Specifically, the Settlement provides for an attorneys' fee

[19] Shim Decl., ¶¶ 7-10.

award of 35% of the Gross Settlement Fund (i.e. $700,000.00), a typical percentage in the resolution of common fund cases.[20] Class Counsel has devoted numerous hours to and faced significant risk[21] in the prosecution of this matter and, more importantly, made a substantial fund available to a large number of otherwise-underrepresented, low-paid workers.

The "common fund" method, or "percentage-of-the-benefit" analysis, calculates attorneys' fees based on a percentage of the common benefit to the class. *In re Consumer Privacy Cases,* 175 Cal.App.4th 545 (2009); *Serrano v. Priest*, 20 Cal.3d 25 (1977). In cases where a common fund has been created—i.e., where each class member will "receive a mathematically ascertainable payment"[22]—California state courts,[23] the Ninth Circuit[24] and the United States Supreme Court[25] agree that awarding attorneys' fees as a percentage of the common fund is the proper method.[26]

The *Serrano* factors further justify the common fund fee award.[27] *Serrano* explained the trial courts may consider additional factors when considering a fee award: (1) time and labor required, (2) the contingent nature of the fee agreement, (3) extent to which the nature of the litigation precluded other employment by the attorneys, (4) experience, reputation, and ability of the attorneys who performed services in the litigation and their displayed skill, (5) amount involved

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[20] *See, e.g., Haitz v. Meyer, et al.*, No. 572968-3 (Alameda Super. Ct., 1990) (45% fee award); *Ibrahimi v. Walgreen*, (Contra Costa Super. Ct. 2019) Case No. MSC16-02120) (35% fee award in wage and hour class action); *Rippee v. Boston Mkt. Corp*., 2006 U.S. Dist. LEXIS 101136 (S.D. Cal. Oct. 10, 2006) (40% fee award); Exhibit "D" (Compendium of Settlement Item Awards); *Barbosa v. Cargill Meat Solutions Corp.,* 2013 U.S. Dist. LEXIS 93194 (E.D. Cal. 2013) (33% fee award of gross fund); *Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC, 2014 WL 6473804, at *9 (C.D. Cal. 2014) (33 1/3% fee award in wage and hour class action); *Morris v. Lifescan, Inc*. 54 Fed.Appx. 663 (9th Cir. 2003) (affirming 33% fee award); *Savage v. California Family Health LLC*, Case No. 34-2016-00192282-CU-OE-GDS (Sacramento Super. Ct. 2017) (1/3 fee award in wage and hour class action); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482 (E.D. Cal. 2010) (33 1/3% award in wage and hour class action); .

[21] Class Counsel undertook this matter solely on a contingent basis, with no guarantee regarding the potential duration of the litigation or even the ultimate reimbursement of fees or costs. Looking, *ad hoc*, at the fact that if a settlement did occur, that doesn't change the risks accepted at the inception of the case or at any point along its timeline. Nor , looking more broadly, does it account for the countless cases that do not settle, do not settle well and/or are dismissed after sometimes thousands of hours of work thereon.

[22] *Vasquez*, 266 F.R.D. 482 at *491 (E.D. Cal. 2010).

[23] *Lealao v. Beneficial California*, 82 Cal.App.4th 19 (2000); *Serrano v. Priest*, 20 Cal.3d 25 (1977).

[24] *Staten v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003); *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000).

[25] The United States Supreme Court has always computed common fund fee awards on a percentage of the fund basis. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 100 S Ct. 745 (1980); *Central Railroad & Banking Co. of Georgia v. Pettus*, 113 U.S. 116, 5 S.Ct. 387 (1885); *Sprague v. Ticonic Nat'l Bank,* 307 U.S. 161, 59 S.Ct. 777 (1939).

[26] A lodestar approach (enhanced by a multiplier) can be used as an alternative to the common fund theory when "there is no way to gauge the net value of the settlement or any percentage thereof." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).

[27] *Serrano v. Priest*, 20 Cal.3d 25 (1977); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794 (1996).

and the results obtained, and (6) the informed consent of the client to the fee agreement. *Serrano*, 20 Cal.3d at 49.

1. Time and Labor

Class Counsel has invested considerable amounts of time and labor in litigating the Class' claims, incurring approximately 592 hours combined in prosecuting this litigation.[28] In so doing, Class Counsel drew on their experience litigating wage and hour class actions against employers very much like this one in order to minimize wasted effort. Class Counsel's efforts include, *inter alia*, conducting written discovery (both formal and informal), production and review of documents, obtaining data for mediation, interviews with putative Class Members, a mediation session and continued hard-fought negotiations. [29]

2. Contingent Nature of Fees, Preclusion of Other Employment and Informed Consent of Plaintiff

The fee award is further supported by the contingency risk assumed in prosecuting the case.[30] The California Supreme Court has recognized that attorney fee awards should be enhanced to compensate attorneys for the risks of loss involved in contingency cases. *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001); *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal.App.4th 140, 154 (2006); *See also, In re Consumer Privacy Cases*, 175 Cal.App.4th at 556.

Class Counsel undertook this matter solely on a contingent basis, with no guarantee regarding the potential duration of the litigation or the ultimate recovery of fees or costs. While Class Counsel believes the claims in this case are meritorious, it also recognized the factual and

[28] Hawkins Decl., ¶ 36; Solouki Decl., ¶ 60.

[29] Attorney fee awards in common funds cases are intended to compensate class counsel for work performed both before *and after* the date of judgment. In nearly every class action, the efforts during litigation and in pursuing approval of the settlement are only part of the overall work picture. Post-judgment, class counsel is required to stay in close contact with the claims administrator to ensure payment of the settlement proceeds, to communicate with class members, with their CPAs (regarding the tax treatment of settlement proceeds), even with other attorneys, to report compliance with the terms of the Court's final approval order thereon and myriad other tasks. Although rarely discussed in connection with requests for attorneys' fees and costs, it's not unusual for some of these efforts to take place years after judgment. With a class of this magnitude, these are efforts that will assuredly be required by Class Counsel.

[30] California courts "agree...that 'riskiness,' difficulty or contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee award." *Salton Bay Marina, Inc.*, 172 Cal.App.3d at 955 (*citing La Mesa-Spring Valley School Dist. of San Diego County v. Nobuo Otsuka*, 57 Cal. 2d 309, 316 (1962); *See also, In re Quantum Health Resources, Inc. Sec. Litig.*, 962 F. Supp. 1254, 1257 (C.D. Cal. 1997).

legal challenges involved in complex litigation, generally, as well as the specific risks posed by the facts in this case. While attorneys who represent corporations are routinely paid on an hourly basis, plaintiffs in wage and hour cases can rarely afford to pay their attorneys by the hour, especially if they expect to be represented by a law firm well known for achieving good results. As firms committed to wage and hour class actions, including the one at hand, Class Counsel must accept these cases on a wholly contingent basis, with no guarantee of recovery of fees, or even the reimbursement of litigation costs. As California case law recognizes, Class Counsel's commitment to this litigation should not be assessed in a vacuum.[31] The 592 hours Class Counsel spent on litigation, investigation and settlement efforts in this case prevented them from pursuing other hourly or contingency fee-based work.

Therefore, the agreement of Plaintiffs to enter contingency fee arrangements supports the requested attorney fee award. *Glendora*, 155 Cal.App.3d at 472. Here, Plaintiffs entered into consensual contingency fee agreements and expressly endorse Class Counsel's request for attorneys' fees and costs. Additionally, Class Members have been notified of the requested attorneys' fees and costs by means of the Notice.[32] In light of the work performed, risks assumed and results achieved, it is clear that Class Counsel's fee request is supported and should be approved.

3. Experience of Class Counsel

The experience and ability of Class Counsel were essential to the settlement achieved here. Class Counsel developed an extensive factual record, convinced Defendant of its exposure, and expertly negotiated the terms of the Settlement. Only counsel who have a successful history litigating these types of cases and who are well versed in class action litigation and wage and hour

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[31] *Glendora Community Redevelopment Agency*, 155 Cal.App.3d at 475 (recognizing that "a busy lawyer" with a good "reputation" might be "reluctant to accept the employment because of the preclusion of other business"); *Cal. Rules Prof. Conduct, R*. 4-200 (B)(4) (when determining whether a fee is appropriate, individual attorneys must consider "[t]he likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the member").

[32] Litigants are familiar with one-third fee recoveries being the norm–this percentage (or higher awards of 35% or 40%) being common in employment, personal injury and other areas of litigation within the commonplace experience of these class members. Also, as suggested by the compendium of examples cited throughout this brief, it is a judicial benchmark as well. Indeed, "[e]mpirical studies show that…fee awards in class actions average around one-third of the recovery." *4 Newberg* § 14.6

law in this jurisdiction could have effectively marshaled the evidence and presented it to achieve this Settlement.[33] "The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award." *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2007). Here, Class Counsel was still able to secure a great result for Class Members despite the risks in this case.

B. THE LODESTAR METHODOLOGY ALSO JUSTIFIES APPROVAL OF THE REQUESTED FEES

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other.[34] The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys, and counsel is entitled to compensation for every hour reasonably spent on the matter. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-33. The reasonableness of hours is assessed by "the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.

Class Counsel's 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 achieved. *Id*. at 49; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001), ["[t]here is no…rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar"].

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[33] Hawkins Decl., ¶¶ 21-25; Solouki Decl., ¶¶ 57-66.

[34] *Laffitte*, *supra*, 1 Cal.5th at 505 (explaining that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court's reasonableness determination" and "the lodestar calculation . . . does not override the trial court's primary determination of the fee as a percentage" and "does not impose an absolute maximum or minimum on the potential fee award."); *see also, e.g.*, *Vizcaino*, 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.").

Here, Class Counsel spent approximately 592 hours combined litigating this matter and finalizing the Settlement for a lodestar value of approximately $473,510.00.[35] In light of the facts and circumstances of this matter, as well as the results that Class Counsel have achieved, Class Counsel have spent a reasonable number of hours performing work on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement and thus respectfully request the Court apply a modest multiplier of 1.47. Where "exceptional effort produced an exceptional benefit," a fee award may be enhanced. *Thayer v.* 92 Cal. App. 4th at 838; *In re Vitamin Cases*, 110 Cal. App. 4th 1041, 1058-1059 (2003) (high-quality work from counsel supports multiplier).

C. <u>CLASS COUNSEL'S COSTS ARE REASONABLE</u>

Over the course of this litigation, Class Counsel incurred ordinary litigation costs over the past three years totaling $27,662.17. While the Settlement provided a ceiling for litigation costs of $50,000.00, Class Counsel kept costs at bay and are now respectfully seeks litigation costs in the amount of $27,662.17.[36] Noteably, this amount does not account for additional future expenses in overseeing the settlement process, making appearances, filing court documents, ensuring claims administration compliance with this Court's orders, responding to Class Members, etc. Since these costs are reasonable and serve to benefit the class, they warrant reimbursement.[37]

VII. REPRESENTATIVE PLAINTIFF DESERVES THE PROPOSED ENHANCEMENT AWARD

The Settlement further provides for, and Plaintiffs now requests and Service Award payments of $10,000.00 each totaling $20,000.00. A Service Award to the lead Plaintiffs in class action litigations are commonplace and are "intended to compensate class representatives for work

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[35] Hawkins Decl., ¶ 28; Solouki Decl., ¶ 60.

[36] Hawkins Decl., ¶ 29, Exh. 1; Solouki Decl., ¶¶ 67-68.

[37] *In re United Energy Corp. Sec. Litig.*, *Not Rpt'd in* F.Supp., 1989 WL 73211, * 6 (C.D. Cal. 1989) ("[a]n attorney who creates or preserves a common fund by judgment or settlement for the benefit of a class is entitled to receive reimbursement of reasonable fees and expenses involved"); 1 Alba Conte, *Attorney Fee Awards* § 2:08 at 50-51 ("The prevailing view is that expenses are awarded in addition to the fee percentage."); *In re Warner Comm. Sec. Litig.*, 618 F.Supp. 735 (S.D.N.Y.1985); *In re GNC Shareholder Litig.: All Actions*, 668 F.Supp. 450, 452 (W.D. Pa. 1987)
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done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action".[38] Service Awards "are intended to advance public policy by encouraging individuals to come forward and perform their civic duty in protecting the rights of the class and to compensate class representatives for their time, effort and inconvenience … Federal authority is in accord."[39]

Courts in California may consider the following factors in determining the appropriateness of such an award: (1) the risk to the class representative in commencing suit, (2) the notoriety and personal difficulties encountered by the class representative, (3) the amount of time and effort spent by the class representative, (4) the duration of the litigation, and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

The proposed Enhancement Award is reasonable given the work the Plaintiffs performed on behalf of fellow Class Members, the risks they faced and those continued to be faced for their participation in the litigation (e.g., retaliation from future employers), and the minimal impact the request will have on the amount of any class member's level of recovery. As detailed in Plaintiffs' declarations, previously submitted in support of Preliminary Approval, and Plaintiffs' declarations filed in support of this Motion for Final Approval, Plaintiffs spent considerable time prosecuting this action with Class Counsel. This included and was not limited to frequent emails and telephone calls with counsel to address issues surrounding the organizational structure of the company, job duties they and other Class Members performed, production of document, responding to discovery, being deposed, and communications surrounding mediation and settlement.[40]

VIII. REIMBURSEMENT OF ADMINISTRATION FEES IS APPROPRIATE

As set forth in the accompanying APEX Class Action LLC ("APEX") Declaration, the total costs

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[38] Plaintiffs risked being "blacklisted" by other future employers for having sued this defendant in a class action. As well stated by a New York Southern District Court: "[T]he fact that a plaintiff has filed a federal lawsuit is searchable on the internet and may become known to prospective employers when evaluating the person . . . Even where there is not a record of actual retaliation, notoriety, or personal difficulties, class representatives merit recognition for assuming the risk of such for the sake of absent class members." *Guippone v. BH S&B Holdings LLC*, 2011 U.S. Dist. LEXIS 126026, at **4, 20 (S.D.N.Y. Oct. 28, 2011).

[39] *In re California Indirect Purchases*, 1998 WL 1031494, 11 (Alameda Super. Ct. 1998) (internal citations omitted).

[40] Hawkins Decl., ¶ 30; Navarette Decl., ¶¶ 9-11; Carrero Decl., ¶¶ 6-7.

incurred and to be incurred by APEX for the notice and settlement administration process are $33,000.00. This amount includes the total cost for services in connection with the administration of the Settlement, including fees incurred and anticipated future costs for completion of the administration. This amount includes the total cost for services in connection with the administration of the Settlement, including fees incurred and anticipated future costs for completion of the administration.[41]

Accordingly, the Court should grant final approval of payment to APEX., a necessary third-party for its handling of the notice and settlement process, in the amount of $33,000.00.

IX. CONCLUSION

Based upon the foregoing, Plaintiffs respectfully request the Court grant final approval of the Settlement and approve Class Counsel's application for attorneys' fees and costs, the PAGA Penalty Payment, the requested Service Awards to Plaintiffs, and reimbursement of the settlement administration costs.

Dated: October 24, 2025

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By: ______________________

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[41] Shim Decl., ¶ 19.

Dated: October 24, 2025

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