

1 David Mara, Esq. (230498)
2 Jill Vecchi, Esq. (299333)
3 **MARA LAW FIRM, PC**
4 2650 Camino Del Rio North, Suite 302
5 San Diego, California 92108
6 Telephone: (619) 234-2833
7 Facsimile: (619) 234-4048
8 Email: dmara@maralawfirm.com
9 jvecchi@maralawfirm.com

10 Attorneys for Plaintiff VALERIE MAE LUNA,
11 on behalf of herself, all others similarly situated,
12 and on behalf of the general public
13

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF LOS ANGELES**

16 VALERIE MAE LUNA on behalf of herself,
17 all others similarly situated, and on behalf of
18 the general public,

19 Plaintiffs,

20 v.

21 ACCU BIO-CHEM LABORATORIES; and
22 DOES 1-100,

23 Defendants.
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27
28

Case No. 22STCV35014

*[Assigned for All Purposes to the
Honorable Elihu M. Berle, Dept.6]*

**PLAINTIFF VALERIE MAE LUNA'S
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT**

Date: June 13, 2023

Time: 9:00 a.m.

Date File: November 3, 2022

Trial Date: None Set

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1 **I. INTRODUCTION**

2 This motion seeks approval of a non-reversionary \$235,000 proposed wage and hour class
3 action settlement reached between Plaintiff Valerie Mae Luna (hereinafter “Plaintiff” or “Ms.
4 Luna”) and Defendant Accu Bio-Chem Laboratories, LLC (hereinafter “Defendant” or “ABCL”)
5 (hereinafter Plaintiff and Defendant are collectively referred to as the “Parties”).¹ The settlement
6 is on behalf of Plaintiff and a Class comprised of all individuals who worked for Defendant as
7 non-exempt hourly employees in California at any time during the Class Period.² The Class Period
8 is November 3, 2018, to August 19, 2023. This motion also seeks an order entering judgment.

9 On March 12, 2024, the Settlement Administrator mailed Class Notices to all 79 Class
10 Members.³ These Class Members have until May 13, 2024, to request to be excluded from the
11 settlement or to object to it. As of the date of this filing, the Settlement Administrator has not
12 received any disputes regarding the number of workweeks that Class Members were credited to
13 have worked.⁴ Currently, the Settlement Administrator has not received any objections to the
14 settlement or requests for exclusion from the settlement.⁵ The Settlement Administrator will
15 provide the Court with the final Class response on May 31, 2024.

16 To date, this matter has required 155 hours of attorney time from Class Counsel. This
17 litigation involved investigations into the claims asserted, discovery, the production and review of
18 documents from ABCL, a full day of mediation, and evaluation of continuing litigation.

19 As will be demonstrated herein, the attorneys’ fee request of \$78,325.50 (“Attorney Fee
20 Award”), which represents 33.33% of the Gross Settlement Amount (“GSA”), is fully supported
21 using the percentage fee method. The Attorney Fee Award is also supported under the lodestar
22 cross-check method. Plaintiff further moves for reimbursement of litigation costs and expenses in
23 the amount of \$12,010.66 (“Cost Award”), originally estimated not to exceed \$25,000, for costs
24

25 ¹ The Parties’ Class Action and PAGA Settlement Agreement (“Agreement”) is attached to the
26 Declaration of David Mara, Esq. as Exhibit 1. “Exhibit 1” herein refers to the Parties’ Agreement.

26 ² Exhibit 1 at Paragraph 1.5.

27 ³ Declaration of Madely Nava of APEX Class Action, LLC, in Support of Motion for Final
27 Approval of Class Action Settlement (“Nava Dec.”) ¶ 7.

28 ⁴ Nava Dec. ¶ 13.

28 ⁵ Nava Dec. ¶¶ 11-12.

1 incurred in litigating this matter. Plaintiff also moves for final approval of the payment in the
2 amount of \$10,000 to Plaintiff (this payment is referred to as the “Service Payment Award”) to
3 compensate her for agreeing to a general release of her claims against ABCL and her vital role in
4 representing the Class Members and spearheading the case to seek actual and substantial monetary
5 relief for the Class. Additionally, Plaintiff moves for final approval of Administration Costs in the
6 amount of \$5,990, originally estimated not to exceed \$10,000, to the Settlement Administrator,
7 APEX Class Action Administration (hereinafter “APEX”) for the costs and fees of administering
8 settlement (“Administration Costs”).

9 The requested Attorney Fee Award, Cost Award, Service Payment Award, and
10 Administration Costs were fully disclosed to the Class Members when the Class Notice was mailed
11 to them. Most importantly, to date, the settlement and all of its terms have received support from
12 Class Members as not a single Class Member has objected to the settlement or requested to be
13 excluded from it. With a currently estimated average and high payout to Settlement Class Members
14 of \$1,312.33 and \$2,781.77, respectively, the settlement is fair, adequate, and reasonable. The
15 Court is, therefore, respectfully requested to consider the Class Members’ endorsement of the
16 settlement and grant final approval of the settlement, and approve of the Attorney Fee Award, Cost
17 Award, Service Payment Award, and Administration Costs in the amounts as preliminarily
18 approved of by this Court and disclosed to the Class Members, and as requested herein.

19 As demonstrated herein, Class Counsel is convinced that the proposed settlement is in the
20 best interest of the Class based on the negotiations and a detailed knowledge of the issues present
21 in this matter. The length and risks of trial and perils of litigation that affect the value of the claims
22 were all carefully weighed by Class Counsel. In addition, the affirmative defenses asserted by
23 ABCL, ABCL’s contentions that Class Members were compensated for all wages due and
24 provided lawful meal and rest breaks, the uncertainty of class certification, the difficulties of
25 complex litigation, the lengthy process of establishing specific damages, and various possible
26 delays and appeals were all carefully considered by Class Counsel in arriving at the proposed
27 settlement.

28 ///

II. BACKGROUND, INVESTIGATION, AND LITIGATION HISTORY

a. Litigation History

Defendant is a third-party analytical lab that analyzes and tests various products, such as cosmetics and over-the-counter products, on behalf of other companies. On November 3, 2022, Plaintiff commenced this action by filing a Complaint alleging causes of action against Defendant for (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (6) Waiting Time Penalties; (7) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.); and (8) Failure to adopt a compliant sick pay/paid time off policy (Lab. Code §§233, 234, 246). (Mara Dec. ¶ 12).

On October 24, 2022, Plaintiff provided notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant in accordance with the Private Attorneys General Act of 2004 (“PAGA”). On January 1, 2023, Plaintiff filed a PAGA action which seeks civil penalties pursuant to Cal. Lab. Code 2699 *et seq.* for violations of all claims in the class action. The PAGA action was consolidated with the class action on March 15, 2023. (Mara Dec. ¶ 13).

b. Discovery and Investigation

After filing, the Parties engaged in informal discovery. These discovery efforts led to Defendant producing policy documents, such as the employee handbook that covered employees’ employment with Defendant, and time and wage records. Included within these documents were Defendant’s wage and hour policies, including its meal and rest period policies. Defendant also produced time and wage records for a 20% random sampling of the Class Members which Plaintiff’s Counsel analyzed. To determine which Class Members would be included in the sampling, Plaintiff randomly selected employee numbers and those employees were included in the sampling. As such, the sampling should be reflective of the entire Class as the employees included in it were selected at random. Defendant further produced Plaintiff’s personnel file and time and pay records. Plaintiff also requested, and Defendant produced, data surrounding the number of current and former employees, as well as the number of shifts and pay periods worked

1 by Class Members during the relevant time period and Class Members' average rate of pay, to
2 establish a potential exposure model in preparation for mediation. From this discovery, Plaintiff
3 and her Counsel were able to analyze Defendant's liability in this action and prepare a realistic
4 damage model. (Mara Dec. ¶ 14).

5 **c. Settlement Negotiations**

6 The Parties attended an all-day mediation presided over by Honorable Amy Hogue (Ret.)
7 on June 20, 2023. This mediation was successful. The Parties then met and conferred over all the
8 terms of the settlement and finalized their settlement in the Parties' Agreement. The Parties seek
9 final approval of the Agreement in the instant motion. (*See* Mara Dec. ¶ 15; *see also* Exhibit 1
10 attached thereto).

11 **III. THE PROPOSED SETTLEMENT**

12 **a. The Terms of the Settlement**

13 The Parties have agreed, subject to and contingent upon the Court's approval, that this
14 action be settled and compromised for the non-reversionary total sum of \$235,000 ("Gross
15 Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of
16 \$78,325.50 (33% of the GSA) to compensate Class Counsel for work already performed and all
17 work remaining to be performed in documenting the settlement, administering the settlement, and
18 securing Court approval; (b) litigation costs of \$12,010.66 (originally estimated not to exceed
19 \$25,000); (c) a Service Payment Award to the named class representative, Valerie Mae Luna, in a
20 sum not to exceed \$10,000 in consideration for prosecuting this class action, serving as Class
21 Representative, work performed, and risks undertaken for the payment of attorneys' fees and costs
22 in the event she had been unsuccessful in the matter; (d) settlement administration fees and
23 expenses to APEX Class Action LLC (hereinafter "APEX") in the amount of \$5,990 (estimated
24 not to exceed approximately \$10,000); and (e) \$25,000 allocated to Plaintiff's claims under the
25 PAGA. Of this payment, 75%, or \$18,750 will be provided to the LWDA, and 25%, or \$6,250,
26 will be available for distribution to Aggrieved Employees.⁶

27 ⁶ Aggrieved Employees are all individuals who worked for Defendant as non-exempt hourly
28 employees in California during the PAGA Period. (Exhibit 1 at Paragraph 1.4). The PAGA Period
is October 24, 2021, to August 19, 2023. (Exhibit 1 at Paragraph 1.31).

1 **b. Calculation of the Settlement Payments to Class Members**

2 After all Court-approved deductions from the GSA, it is estimated that \$103,673.84 (“Net
3 Settlement Amount” or “NSA”), less employee taxes on the “wage portion” of the settlement
4 payment, will be distributed to Participating Class Members.⁷ Subject to the terms and conditions
5 of the settlement, each Participating Class Member will receive a portion of the Net Class
6 Settlement Amount called their “Individual Class Payment.” An Individual Class Payment will be
7 calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked
8 by all Participating Class Members during the Class Period and (b) multiplying the result by each
9 Participating Class Member’s Workweeks. (Exhibit 1 at Paragraph 3.2.4). Therefore, the value of
10 each Class Member’s Individual Settlement Share ties directly to the amount of weeks that he or
11 she worked.

12 The Individual Class Payment will be divided into a “wage portion” to compensate
13 Participating Class Members for alleged unpaid wages and a “non-wage portion” to compensate
14 Participating Class Members for alleged interest and penalties. The wage portion will make up
15 50% of each Participating Class Members’ Individual Class Payment, and the non-wage portion
16 will make up 50% of each Participating Class Members’ Individual Class Payment. (Exhibit 1 at
17 Paragraph 3.2.4.1).

18 In addition, each Aggrieved Employee will receive a will receive a proportionate share of
19 the PAGA Payment that is allocated for distribution to PAGA Aggrieved Employees (i.e., 25% of
20 the PAGA Payment). The Administrator will calculate each Individual PAGA Payment by (a)
21 dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$6,250) by the
22 total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA
23 Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods.
24 Aggrieved Employees assume full responsibility and liability for any taxes owed on their
25 Individual PAGA Payment. (Exhibit 1 at Paragraph 3.2.5.1). Therefore, the value of each PAGA

26 ⁷ Participating Class Members are “[a]ll members of the Settlement Class except those who timely
27 submit a valid Request for Exclusion . . . from this Settlement pursuant to the process described in
28 this Agreement. For the purposes of the release of PAGA claims, ‘Participating Class Members’
also includes Class Members employed during the PAGA Period, even if they submit a valid
Request for Exclusion.” (Exhibit 1 at Paragraph 9(e), Page 6).

1 Aggrieved Employees' PAGA Settlement Share ties directly to the amount of pay periods that the
2 PAGA Aggrieved Employees worked during the PAGA Period.

3 Under no circumstances will any portion of the \$235,000 settlement revert to Defendant
4 and 100% of the NSA will be paid out to Participating Class Members. In addition, the employer's
5 share of taxes will be paid in addition to and outside of the GSA.

6 **c. Release of Claims**

7 The Class Representative will be bound by a general release. (*See* Exhibit 1 at Paragraph
8 5.1). In exchange for an Individual Class Payment, all other Participating Class Members will
9 agree to the following release:

10 All Participating Class Members, on behalf of themselves and their respective
11 former and present representatives, agents, attorneys, heirs, administrators,
12 successors and assigns, release the Released Parties from (i) all claims that were
13 alleged, or reasonably could have been alleged, based on the facts stated in the
14 Operative Complaints, including, e.g., 1) Failure to Pay All Straight Time Wages;
15 2) Failure to Pay All Overtime Wages; 3) Failure to Provide Meal Periods (Lab.
16 Code §§ 226.7, 512, IWC Wage Order No. 4-2001(11); Cal. Code Regs., tit. 8 §
17 11090); 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC
18 Wage Order No. 4-2001(12); Cal. Code Regs. tit. 8 § 11040); 5) Knowing and
19 Intentional Failure to Comply with Itemized Employee Wage Statement Provisions
20 (Lab. Code §§ 226, 1174, 1175); 6) Waiting Time Penalties; 7) Violation of Unfair
Competition Law (Bus. & Prof. Code § 17200, et seq.); and 8) Failure to adopt a
compliant sick pay/paid time off policy (Lab. Code §§233, 234, 246). This release
will be for the Class Period. Except as set forth in Section 5.3 of this Agreement,
Participating Class Members do not release any other claims, including claims for
vested benefits, wrongful termination, violation of the Fair Employment and
Housing Act, unemployment insurance, disability, social security, workers'
compensation or claims based on facts occurring outside the Class Period.

21 (Exhibit 1 at Paragraph 5.2).

22 In addition, all Aggrieved Employees will agree to the following release in exchange for
23 an Individual PAGA Payment: "All Aggrieved Employees are deemed to release, on behalf of
24 themselves and their respective former and present representatives, agents, attorneys, heirs,
25 administrators, successors and assigns, the Released Parties from all claims for PAGA penalties
26 that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative
27 Complaints, and the PAGA Notice. This release will be for the PAGA Period." (Exhibit 1 at
28 Paragraph 5.3).

1 **d. Class Notice Process**

2 On February 26, 2024, ABCL provided the Settlement Administrator with the Class Data.
3 (See Nava Dec. ¶ 5). Prior to mailing, the Settlement Administrator conducted a National Change
4 of Address (NCOA) search in an attempt to update the class list of addresses as accurately as
5 possible. (See Nava Dec. ¶ 6). A search of this database provides updated addresses for any
6 individual who has moved in the previous four (4) years and notified the U.S. Postal Service of
7 their change of address. On March 12, 2024, the Settlement Administrator mailed the Class Notices
8 to 79 Class Members by U.S. First Class mail in English and Spanish. (See Nava Dec. ¶ 7).

9 After mailing, as of the filing of this motion, two (2) Class Notices were returned to the
10 Settlement Administrator. (See Nava Dec. ¶ 8). Of the two returned Class Notices, none were
11 returned with a forwarding address. (*Id.*). Therefore, the Settlement Administrator conducted a
12 computerized skip trace on the two returned Class Notices in order to acquire updated addresses
13 for the purpose of re-mailing the Class Notices. (*Id.*). This skip trace effort resulted in obtaining
14 one updated address, to which Settlement Administrator re-mailed the Class Notice via U.S. First
15 Class Mail. (*Id.*). As such, to date, one (1) Class Notice is considered undeliverable. (See Nava
16 Dec. ¶ 9).

17 Class Members have May 13, 2024, to respond to the settlement. To date, the settlement
18 has received support from the Class Members. Not a single Class Member has submitted an
19 objection or request for exclusion from the settlement. (See Nava Dec. ¶¶ 11-12). In addition, no
20 Class Member has submitted a dispute as to the workweeks attributed to him or her. (See Nava
21 Dec. ¶ 13). Therefore, currently, all 79 Class Members are participating in the settlement, meaning
22 100% of the Class Members are Participating Class Members. The Settlement Administrator will
23 provide the final statistics from the Class Notice process and the Class Members' Response on
24 May 31, 2024.

25 **e. Distribution of Settlement Funds**

26 Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts
27 necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the
28 Administrator no later than 14 days after the Effective Date. (Exhibit 1 at Paragraph 4.3). The

Effective Date is the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. (Exhibit 1 at Paragraph 1.18).

Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (Exhibit 1 at Paragraph 4.4).

The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (Exhibit 1 at Paragraph 4.4.1).

The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without United States Postal Service ("USPS")

1 forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail
2 checks to the USPS forwarding address provided or to an address ascertained through the Class
3 Member Address Search. The Administrator need not take further steps to deliver checks to Class
4 Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly
5 send a replacement check to any Class Member whose original check was lost or misplaced,
6 requested by the Class Member prior to the void date. (Exhibit 1 at Paragraph 4.4.2).

7 For any Class Member whose Individual Class Payment check or Individual PAGA
8 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
9 funds represented by such checks to The United Way (“Cy Pres Recipient”). The Parties, Class
10 Counsel and Defense Counsel represent that they have no interest or relationship, financial or
11 otherwise, with the intended Cy Pres Recipient. (Exhibit 1 at Paragraph 4.4.3).

12 **f. Final Judgment**

13 Pursuant to Cal. Rules of Court, Rule 3.771(b), notice of the final judgment will be posted
14 on the Settlement Administrator’s website. (See Exhibit 1 at Paragraph 7.8.1).

15 **IV. ARGUMENT**

16 **a. The Settlement is Fair, Reasonable, and Adequate and Satisfies the Standard 17 for Final Approval**

18 California Rule of Court, Rule 3.769, requires court approval for class action settlements.
19 Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62
20 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602
21 (“[T]he law wisely favors settlements”). Accordingly, the Court must give “[due] regard to what
22 is otherwise a private consensual agreement between the parties.” *Wershba v. Apple Computer, 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); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 742 43. A
27 court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801.

1 However, “a presumption of fairness exists where: (1) the settlement is reached through arm’s-
2 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
3 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
4 is small.” *Dunk*, 48 Cal. App. 4th at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a
5 court should consider additional relevant factors, including the strength of the plaintiff’s case
6 compared to the settlement amount; the risk, expenses, complexity, and likely duration of further
7 litigation; and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th
8 at 1802; see also *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723; see also *Boyd v.*
9 *Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

10 At the time of preliminary approval, the Court was provided with sufficient information to
11 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
12 until after the Class had an opportunity to respond to the settlement.⁸ Subject only to the Class’s
13 reaction to the settlement, the Court preliminarily presumed the settlement was fair, adequate and
14 reasonable. To date, not a single objection to the settlement has been submitted by any Class
15 Member to the Settlement Administrator. Thus, the settlement is entitled to the presumption that
16 it is fair and in all other respects proper and should be finally approved.

17 **b. The Court Should Approve the Requested Fees and Costs**

18 **i. The Requested Fee Award is Fair and Reasonable, Calculated as a**
19 **Percentage of a Common Fund**

20 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
21 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
22 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
23 1132 (The “experienced trial judge is the best judge of the value of professional services rendered
24 in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.

25 California law provides that an attorneys’ fee award should be equivalent to fees paid in

26 ⁸ See Memorandum of Points and Authorities in Support of Renewed Motion for Preliminary
27 Approval, pages 16-22. In addition to the *Dunk* factors, Class Counsel also detailed the other
28 factors such as the strengths of Plaintiff’s case, risks and costs of further litigation, as well as the
reasonableness of the GSA amount in light of *Kullar v. Foot Locker Retail, Inc.* (2008) 168
Cal.App.4th 116.

1 the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half*
2 *Int'l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a
3 recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
4 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
5 in comparable litigation.” *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small will
6 “chill the private enforcement essential to the vindication of many legal rights and obstruct the
7 representative actions that often relieve the courts of the need to separately adjudicate numerous
8 claims.” *Lealao, supra*, 82 Cal.App.4th at 53. Therefore, fees in class and representative actions
9 should approximate the probable terms of a contingent fee contract negotiated by a sophisticated
10 attorney and client in comparable litigation. *Id.* at 48.

11 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
12 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
13 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th
14 at 1270). It is not an abuse of discretion to choose one method over another as long as the method
15 chosen is applied consistently using percentage figures and/or rates that accurately reflect the
16 marketplace. In cases where class members present claims against a settlement amount and the
17 settlement agreement provides that the defendant agrees to paying the attorneys a percentage of
18 the same, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32.

19 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
20 depending on the circumstances of the case. *Conte & Newberg, Newberg on Class Actions* (4th
21 Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F. Supp. 494
22 (awarding attorneys’ fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*
23 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195 (awarding
24 approximately 53% of the settlement amount as attorneys’ fees). California courts routinely
25 approve class action attorneys’ fees awards “averag[ing] around one-third of the recovery.” *Chavez*
26 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of
27 contingency fee in marketplace was appropriate in class actions). The Supreme Court has explained
28 that “percentage of the fund method more accurately reflects the results achieved.” *Laffitte*, 1 Cal.

1 5th at 439. In a similar wage and hour class action, *Laffitte v. Robert Half International, Inc.*, 1
2 Cal. 5th 480 (2016), the California Supreme Court affirmed an award of attorneys' fees equal to
3 1/3 of the common fund. Here, the requested fee is at this same percentage, and evidences all of
4 the same considerations which warranted the one-third fee in *Laffitte*.

5 In short, Class Counsel's fee request of \$78,325.50 (which represents one-third of the
6 GSA) is in line with awards in similar cases in California and nationwide and demonstrates that
7 Class Counsel's fee request is consistent with market rates and is reasonable.

8 **ii. The Requested Attorneys' Fee and Cost Award is Within the Range**
9 **of Fees Approved in Comparable Common Fund Cases**

10 Class Counsel applies for an award of attorneys' fees in the sum of \$78,325.50 (33.33% of
11 the GSA), and litigation costs of \$12,010.66. (Mara Dec. ¶ 16). California state and federal courts
12 have recognized that an appropriate method for determining an award of attorneys' fees is based
13 on a percentage of the total value of benefits made available to Class Members by the settlement,
14 also known as the "common fund" method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (*Serrano*
15 *III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th
16 Cir. 1977) 557 F.2d 759, 769.⁹ Where the amount of a settlement is a "certain easily calculable
17 sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the
18 settlement. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14,
19 § 14:145; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is
20 preferred in class and representative actions because "it better approximates the workings of the
21 marketplace than the lodestar approach." *Lealao, supra*, 82 Cal.App.4th at 49. The purpose of
22 the common fund/percentage approach is to "spread litigation costs proportionally among all the
23 beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent, supra*,
557 F.2d at 769.

24 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: "[O]ne who
25 expends attorneys' fees in winning a suit which creates a fund from which others derive benefits
26 may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in

27
28 ⁹ The California Supreme Court has urged trial courts to consider class action federal authority.
Green v. Obledo (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.
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1 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme
2 Court recognized that the percentage-of-the-benefit approach has been applied “consistently in
3 California when an action brought by one party creates a fund in which other persons are entitled
4 to share.” The reasons for applying this equitable doctrine include: “...fairness to the successful
5 litigant, who might otherwise receive no benefit because his recovery might be consumed by the
6 expenses; correlative prevention of an unfair advantage to the others who are entitled to share in
7 the fund and who should bear their share of the burden of its recovery; encouragement of the
8 attorney for the successful litigant, who will be more willing to undertake and diligently prosecute
9 proper litigation for the protection or recovery of the fund if he is assured that he will be properly
10 and directly compensated should his efforts be successful.” *Id.*

11 Courts have consistently recognized that class action litigation is increasingly necessary to
12 protect the rights of individuals whose injuries and/or damages are too small to economically
13 justify legal action on an individual basis. Accordingly, in determining a reasonable fee award,
14 courts award fees to serve as an economic incentive for lawyers to pursue such litigation in order
15 to achieve increased access to the judicial system for meritorious claims and to enhance deterrents
16 to wrongdoing. This is especially true in situations where multiple similar alleged wrongs would
17 not be economically feasible to pursue individually, such as here. *See A. Conte, Attorney Fee*
Awards (2d Ed., 1993) 104, at 6.

18 When the lawsuit was originally filed, the prospect of a long, drawn-out battle with a
19 defendant represented by experienced counsel, was almost a certainty. By taking on this “battle”
20 on a contingency basis, Class Counsel risked substantial economic loss if the results were not
21 successful. This substantial risk is the reason that the courts approve the use of the percentage
22 method when a settlement is obtained by the efforts of class counsel. *See Vizcaino v. Microsoft*
23 (9th Cir. 2002) 290 F.3d 1043, 1048-49 (quotations omitted) (discussing the risks of engaging in
24 litigation without certainty of compensation).

25 Under the terms of the Agreement, ABCL will pay a Gross Settlement Amount of
26 \$235,000. An award of attorneys’ fees is to be calculated as a percentage of the total value of
27 benefits made available to the Class Members under the settlement. In light of Class Counsel’s
28 prosecution and resolution of the case, the requested Attorneys’ Fees are appropriate and

1 reasonable.

2 Compensating class counsel in class litigation on a percentage basis makes good sense
3 because: (1) it is consistent with the private marketplace where contingent fee attorneys are
4 customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent
5 class members in achieving the maximum possible resolution of the case; and (3) it encourages
6 the most efficient and expeditious resolution of the litigation by providing an incentive for early,
7 yet reasonable, settlement. The requested Attorneys' Fees in this matter satisfies all of those factors
8 and should be approved on a percentage basis.

9 Class Counsel have obtained a substantial recovery on behalf of Plaintiff and the Class.
10 Thus, the requested Attorney Fee Award is appropriate.

11 **iii. A Lodestar Cross-Check Confirms the Reasonableness of the**
12 **Requested Fee**

13 Class Counsel's fee request is reasonable when calculated using the lodestar method. Under
14 the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent
15 on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20
16 Cal. 3d 25, 48. The court then enhances this lodestar figure by a "multiplier" to account for a range
17 of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
18 success achieved. *Id.* at 49; see also *Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM*
19 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92
20 Cal.App.4th 819, 834, ("[t]here is no ... rule limiting the factors that may justify an exercise of
21 judicial discretion to [adjust the] lodestar").

22 Class Counsel has worked 155 hours to date on this case and have calculated the lodestar
23 fee on those hours at \$106,350 at rates reflecting those currently earned in the marketplace. (Mara
24 Dec. ¶ 17, Exhibit 5). Class Counsel respectfully request attorneys' fees in the amount of
25 \$78,325.50 (33.33% of the GSA). All of the work and tasks performed by Class Counsel were
26 reasonable and necessary to the prosecution of this case and are reflected in the result achieved.
27 (Mara Dec. ¶ 18). All services were performed by Class Counsel on a contingent basis. (Mara Dec.
28 ¶ 19). As Class Counsel's lodestar fee is in excess of their fee request, a multiplier on their lodestar

1 fee is not sought herein. (Mara Dec. ¶ 20). In fact, the requested fee results in a so-called “negative
2 multiplier” which suggests the percentage of the fund amount is reasonable and fair. *See Chun-*
3 *Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software, Inc.*
4 *Securities Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at *16.

5 **iv. Class Counsel’s Hourly Rates Are Reasonable**

6 Class Counsel’s hourly rates are between \$600 and \$750 and are in line with rates typically
7 approved in wage and hour class action litigation and which rates have been approved by Courts
8 in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego
9 County Superior Courts. (Mara Dec. ¶ 21; Exhibit 2, Westlaw Court Express’s Legal Billing
10 Report, Volume 14, Number 3, California Region for December 2012; Exhibit 3, 2014 Declaration
11 of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; Exhibit 4, 2012
12 National Law Journal Survey of Hourly Billing Rates for Partners and Associates).

13 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
14 experience in the relevant community. *PLCM Group, Inc* (2000) 22 Cal. 4th 1084, 1095; *Hopson*
15 *v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900. When determining a
16 reasonable hourly rate, courts may consider factors such as the attorney’s skill and experience, the
17 nature of the work performed, the relevant area of expertise and the attorney’s customary billing
18 rates. *Flannery v. California Highway Patro* (1998) 61 Cal. App. 4th 629, 632.

19 Class Counsel’s skill and experience support their hourly rates. Their practice is limited
20 exclusively to litigation, focusing on the representation of employees in wage and hour and
21 consumer class action matters. (Mara Dec. ¶¶ 2-11). As leading attorneys in the field of wage and
22 hour class action litigation, Plaintiff’s counsel continually monitors the prevailing market rates
23 charged by both defense and plaintiff law firms and set the billing rates of their attorneys and
24 paralegals/law clerks to be consistent with the prevailing market rates in the private sector for
25 attorneys and staff of comparable skill, qualifications and experience. Other wage and hour
26 attorneys working as class counsel before California courts charge comparable if not higher rates.
27 (Mara Dec., Exh. 2, Westlaw Court Express’s Legal Billing Report, Volume 14, Number 3,
28 California Region for December 2012; Exh. 3, 2014 Declaration of Richard M. Pearl in *Hohnbaum*

1 *v. Brinker Restaurant Corp.* SDSC GIC834348; Exh. 4, 2012 National Law Journal Survey of
2 Hourly Billing Rates for Partners and Associates). Therefore, as they are in line with those of the
3 relevant community, Class Counsel's hourly rates are reasonable.

4 **v. Class Counsels' Total Hours are Reasonable**

5 In determining a lodestar fee, reasonable hours include, in addition to time spent during
6 litigation, the time spent before the action was filed, including time spent interviewing clients,
7 investigating the facts and law, and preparing the pleadings. See *New York Gaslight Club, Inc. v.*
8 *Carey* (1980) 447 U.S. 54, 62; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th
9 440, 447. Further, the fee award should include fees incurred to establish and defend the attorneys'
10 fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639 ("*Serrano IV*"). Under California law,
11 counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

12 Class Counsel has expended a total of 155 hours on this case. The work performed by Class
13 Counsel in order to achieve a settlement that will provide valuable consideration to the Class,
14 averaging a \$1,312.33 settlement payment per Class Member, with the highest estimated award
15 being \$2,781.77, is outlined by Class Counsel in the declaration submitted herewith. (Mara Dec.
16 ¶¶ 22, 27). Class Counsel have been actively involved in this case, prior to the commencement of
17 this action and all the way up to the present, and Class Counsel's dedication to providing
18 representation in the case has precluded other employment. Here, Class Counsel's many tasks, in
19 summary form, included the following: pre-filing investigation and legal research; communicating
20 with the Class Representative; discussions with Class Members; researching and investigating
21 California's ever-evolving wage and hour laws regarding compensation, overtime, meal and rest
22 periods, itemized wage statements, waiting time penalties, and California's Unfair Competition
23 Law; conducting investigation into Defendant's pay-structures, policies for its non-exempt
24 employees; drafting and filing pleadings; making appearances at Court proceedings; engaging in
25 numerous conferences with Defense Counsel regarding a variety of issues throughout the litigation
26 and settlement; analyzing records produced by Defendant; drafting the mediation brief and
27 performing mediation damages and exposure models; preparing for and attending mediation;
28 drafting and revising the settlement agreement and the Notice to the Class; drafting preliminary

1 approval papers; working with Settlement Administrator on the notice process; reviewing,
2 revising, and proofing Notice papers from the Settlement Administrator; reviewing settlement
3 website; reviewing weekly status reports from the Settlement Administrator regarding Class
4 participation; reviewing and editing the Settlement Administrator's declaration; drafting final
5 approval papers, and preparing for and appearing at the Final Approval Hearing. (Mara Dec. ¶¶
6 22, 27).

7 Class Counsel bore the risk that, despite all of their efforts and skills employed, there may
8 be no recovery. All of the work performed was reasonable and necessary to the prosecution of this
9 case. The work performed was particularly justified, in light of the extraordinary result achieved.

10 **vi. Costs of Litigation**

11 Class Counsel seeks reimbursement of the litigation costs and expenses of \$12,010.66.
12 (Mara Dec. ¶ 29). These costs were all reasonable and necessary to the prosecution of this case
13 and the results achieved and are fair and reasonable.

14 **c. The Service Award is Reasonable**

15 Class Counsel seeks approval of a Service Award to the named Plaintiff in the sum of
16 \$10,000. In agreeing to the settlement, Plaintiff also agreed to a general release of her claims. This
17 release includes all claims, not just wage and hour claims. It should be noted that when the Class
18 Notices were mailed and published, the Class was informed that the Class Representative would
19 apply for this payment and, to date, no Class Members have objected.

20 There are also other factors supporting the request that Plaintiff receive \$10,000. The
21 requested Service Award is also reasonable in light of the benefits Plaintiff has conferred upon the
22 entire Class, resulting in payments averaging \$1,312.33 and highest payment of \$2,781.77. The
23 requested award is appropriate and reasonable based upon Plaintiff's time and effort expended on
24 this case, the risks she faced, and the outcome of this case. Plaintiff has submitted a declaration
25 detailing the efforts and time she expended on behalf of the Class in order to advance this case to
26 its successful conclusion. There is no question that this case would not have reached the same
27 result but for Plaintiff's involvement and input at all stages of the litigation.

28 There are few individuals that are willing to act as a class representative and provide the

1 work, diligence, and willingness to assume a substantial financial risk should Defendant have
2 prevailed in this case. Plaintiff's willingness to assume the financial risk is significant. Plaintiff
3 risked a potential judgment taken against her for attorneys' fees and costs if this matter had not
4 been successfully concluded. Case law holds that a losing party is liable for the prevailing party's
5 costs, *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000), and in some wage and hour
6 actions, such as this case, pursuant to California Labor Code § 218.5, for attorneys' fees as well.
7 Though the fee agreement provides that Class Counsel would pay such costs, Plaintiff would
8 nevertheless have had a cost bill entered against her leaving her ultimately liable for potentially
9 hundreds of thousands of dollars in the unexpected possibility that Class Counsel did not meet
10 their obligation to cover those costs. Unfortunately, there have been several judgments entered
11 against class representatives, e.g. *Koehl v. Verio, Inc.* 142 Cal.App.4th 1313, 1328 (2006) (a wage
12 and hour class action where Defendant prevailed at trial, the named plaintiffs were held liable,
13 jointly and severally for the Defendant's attorneys' fees); *Whiteway v. Fedex Kinkos Office & Print*
14 *Services, Inc.*, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. 2007) (a wage and hour misclassification
15 case lost on summary judgment, after the case was certified, the named Plaintiff was assessed costs
16 in the sum of \$56,788.). The risk of payment of Defendant's costs, in itself alone, is a sufficient
17 basis for an award of the requested enhancement sum. Few individuals are willing to take this risk,
18 and it is clear that Plaintiff, here, championed a cause on behalf of others with potentially huge
19 monetary risks.

20 Courts routinely approve service payments, or incentive awards, to compensate named
21 plaintiffs for the services they provide and the risks they incur during class litigation. See *In re*
22 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers*
23 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
24 representatives); Manual § 21.62 n.971 (noting that service payments are warranted); *Cook v.*
25 *Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y.
26 1997) ("present or past employee whose present position or employment credentials or
27 recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his
28 or her name and efforts to the prosecution of litigation at some personal peril, a substantial

enhancement award is justified”); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) (“We also think there is something to be said for rewarding those drivers who protect and help to bring rights to a group of employees who have been the victims of discrimination.”).

Additionally, it is common knowledge that the modern-day work force is quite mobile, with employees holding several jobs in a career during their lifetime. It is also true that prospective employers in this computer, high-tech age “Google” and/or do extensive background checks and have access to Court databases to see if applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiff cost her former employer a substantial sum of money by her courage to step forward to vindicate not only her own rights but also, those of the similarly situated individuals, all of whom will now receive substantial payments due to the initiation of this action. Such conduct will not be lost on a prospective employer who has to choose between an applicant who has never sued an employer and one who has done so. The requested enhancement far from compensates Plaintiff for opportunities she may lose in the future because of the exercise of a Constitutional right to Petition the Courts for redress of a grievance.

Based on the foregoing, the \$10,000 Service Award to the named Class Representative is fair, appropriate, and justified in light of the work performed, risks undertaken for payment of fees and costs if this case had not been successfully concluded, stigma on future employment opportunities, and the benefits all Class Members.

d. The Administration Costs are Reasonable

The Court-approved Settlement Administrator was responsible for formatting, printing and mailing the Class Notices. The Settlement Administrator was responsible for responding to Class Member inquiries, providing weekly status reports, answering questions from Counsel for the Parties, and providing a declaration to document its duties and responsibilities under the settlement. Plaintiff now requests that the Court finally approve the Settlement Administration Costs in the amount of \$5,990 to APEX for services rendered and to be rendered for the notice and settlement administration process.

Following the grant of final approval, the Settlement Administrator’s duties will continue in order to calculate and mail the individual settlement payments to Participating Class Members,

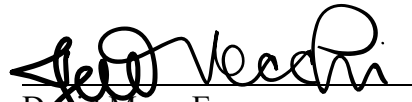
1 perform tax reporting obligations, disburse other payments as ordered by the Court, and perform
2 such other duties as set forth in the Agreement. Administration Costs in the amount of \$5,990 to
3 APEX for services rendered and to be rendered is fair and reasonable and should be granted.

4 **V. CONCLUSION¹⁰**

5 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
6 of the settlement, and award Class Counsel attorneys' fees in the sum of \$235,000 and litigation
7 expenses of \$12,010.66 to Class Counsel, Service Award in the sum of \$10,000 to Plaintiff,
8 Administration Costs in the amount of \$5,990 to APEX, and a payment to the LWDA in the
9 amount of \$18,750 (which is 75% of \$25,000 allocated to Plaintiff's claims under PAGA).

10 Dated: April 11, 2024

MARA LAW FIRM, PC

11 
12

David Mara, Esq.

Jill Vecchi, Esq.

13 Attorneys for Plaintiff VALERIE MAE LUNA on
14 behalf of herself, all others similarly situated, and on
15 behalf of the general public
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28 ¹⁰ Attached hereto as Exhibit A is proof of submission of the final approval motion to the LWDA.
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