

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Matthew K. Moen (SBN 305956)
mmoen@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiffs

[Additional counsel on following page]

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

RUBEN HERNANDEZ, PATRICK
JOSEPH NEIMS, ARTURO RAMIREZ,
and MIGUEL MORENO, as individuals and
on behalf of all others similarly situated,

Plaintiffs,

vs.

NEOVIA LOGISTICS SERVICES, LLC, a
Delaware Limited Liability Company;
NEOVIA LOGISTICS DISTRIBUTION,
LP, a Delaware Limited Partnership; and
DOES 1 through 100,

Defendants.

Case No. CIVSB2305867

*[Case assigned for all purposes to the Hon.
Tony Raphael, Dept. S36]*

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT,
ATTORNEYS' FEES AND COSTS, AND
CLASS REPRESENTATIVE
ENHANCEMENT PAYMENTS**

Date: January 24, 2025
Time: 8:30 a.m.
Dept.: S36

Action Filed: March 2, 2023
Trial Date: None Set

AEGIS LAW FIRM, PC

SAMUEL A. WONG, State Bar No. 217104

KASHIF HAQUE, State Bar No. 218672

JESSICA L. CAMPBELL, State Bar No. 280626

9811 Irvine Center Drive, Suite 100

Irvine, California 92618

Telephone: (949) 379-6250

Facsimile: (949) 379-6251

Email: jcampbell@aegislawfirm.com

BRADLEY/GROMBACHER, LLP

Marcus J. Bradley, Esq. (SBN 174156)

Kiley L. Grombacher, Esq. (SBN 245960)

Corey S. Smith, Esq. (SBN 312002)

31365 Oak Crest Drive, Suite 240

Westlake Village, California 91361

Telephone: (805) 270-7100

Facsimile: (805) 270-7589

mbradley@bradleygrombacher.com

kgrombacher@bradleygrombacher.com

csmith@bradleygrombacher.com

Attorneys for Plaintiffs

PLEASE TAKE NOTICE that on January 24, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department S36 of the San Bernardino County Superior Court, located at 247 W. 3rd Street, San Bernardino, California 92415, Plaintiffs Ruben Hernandez, Patrick Joseph Neims, Arturo Ramirez, and Miguel Moreno (“Plaintiffs”), as individuals and on behalf of a class of similarly situated individuals, will and hereby do move this Court for entry of an Order pursuant to California Code of Civil Procedure § 382 and Rule 3.769 of the California Rules of Court:

1. Confirming the certification of the Settlement Class for settlement purposes under California Code of Civil Procedure § 382;
2. Confirming the appointment of Plaintiffs Ruben Hernandez, Patrick Joseph Neims, Arturo Ramirez, and Miguel Moreno as the Class Representatives for settlement purposes;
3. Confirming the appointment of Paul K. Haines, Fletcher W. Schmidt, and Matthew K. Moen of Haines Law Group, APC, Kashif Haque and Jessica L. Campbell of Aegis Law Firm, PC, and Marcus Bradley of Bradley Grombacher, LLP, as Class Counsel for settlement purposes;
4. Granting final approval of the proposed Stipulation of Settlement (“Settlement Agreement”);
5. Approving an award of \$983,333.33 in attorneys’ fees to Class Counsel;
6. Approving an award of \$82,363.20 in actual litigation costs reimbursement to Class Counsel;
7. Approving an award of \$17,990.00 in costs to Apex Class Action, LLC (“Apex”) for its settlement administration services;
8. Approving Class Representative Enhancement Payments of \$5,000.00 each to Plaintiffs Ruben Hernandez, Patrick Joseph Neims, Arturo Ramirez, and Miguel Moreno (\$20,000.00 total) for their service as Class Representatives; and
9. Entering final judgment in the form of the [Proposed] Judgment and Order Granting Plaintiffs’ Motion for Final Approval of Class Action Settlement, Attorneys’ Fees and

Costs, and Class Representative Enhancement Payments (the “[Proposed] Judgment and Order”) submitted herewith.

This Motion is made on the following grounds: (1) the Settlement Class continues to meet the requirements for class certification for settlement purposes only under Code of Civil Procedure § 382; (2) Plaintiffs and Class Counsel continue to be adequate representatives of the Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the requested awards of attorneys’ fees and costs, Class Representative Enhancement Payments, and settlement administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the [Proposed] Judgment and Order submitted concurrently herewith should be entered so as to give finality to, and allow for disbursements from, the Settlement.

This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the supporting declarations of Matthew K. Moen, Paul K. Haines, Fletcher W. Schmidt, Jessica L. Campbell, Marcus Bradley, Plaintiffs Ruben Hernandez, Patrick Joseph Neims, Arturo Ramirez, and Miguel Moreno, and Katherine Rovertoni of Apex Class Action, LLC, and the exhibits attached thereto; the Settlement Agreement; all other pleadings and papers on file in this action; and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: December 30, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By: 
Matthew K. Moen
Attorneys for Plaintiffs

TABLE OF CONTENTS

I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL BACKGROUND	2
III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS	4
A. Settlement Class Definition	4
B. Monetary Terms	4
C. Summary of Notice Process	5
D. Timing of Payments	6
IV. ARGUMENT	6
A. This Court Should Confirm its Conditional Certification of the Settlement Class for Settlement Purposes Because It Meets All of the Requirements for Class Certification Under Code of Civil Procedure § 382	6
B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate, And Reasonable Compromise of Disputed Wage and Hour Claims	7
1. The Settlement was Reached at Arms' Length, Through Experienced Counsel and an Experienced Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement Considering the Claims Asserted and Risks of Continued Litigation	7
2. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members Because Each Settlement Class Member Will Be Paid Based on the Extent of His or Her Injury	11
3. The 100% Participation Rate and Absence of Any Objections Further Confirm That the Settlement is Fair, Adequate, and Reasonable	12
C. The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Maximum Settlement Amount Confirmed by a Lodestar Cross-Check	12
D. The Requested Cost Reimbursement Warrants Final Approval as Fair, Adequate, and Reasonable	16
E. The Court Should Finally Approve the Requested Settlement Administration Costs	17
F. The Court Should Finally Approve Plaintiffs' Requested Class Representative Enhancement Payments Because the Requested Amounts are Fair, Adequate, And Reasonable Considering Plaintiffs' Efforts and the Risks Assumed on Behalf of the Class	18
V. CONCLUSION	20

TABLE OF AUTHORITIES

Federal Cases

<i>Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.</i>	
455 F.2d 101 (7th Cir. 1972)	8
<i>Bouman v. Block</i>	
940 F.2d 1211 (9th Cir.1991)	14
<i>Harris v. Marhoefer</i>	
24 F.3d 16 (9th Cir. 1994)	16-17
<i>In re Pacific Enterprises Securities Litig.</i>	
47 F.3d 373 (9th Cir. 1995)	12
<i>Rawlings v. Prudential-Bache Properties, Inc.</i>	
9 F.3d 513 (6th Cir. 1993)	13
<i>In re Immune Response Securities Litigation</i>	
497 F.Supp.2d 1166 (S.D. Cal. 2007).....	17
<i>In re Rite Aid Corp. Securities Litigation</i>	
396 F.3d 294 (3d Cir. 2005).....	13
<i>Pennsylvania v. Delaware Valley Citizens' Council for Clean Air</i>	
483 U.S. 711 (1987).....	14
<i>Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.</i>	
460 F.3d 1253 (9th Cir. 2006)	17
<i>Van Vranken v. Atlantic Richfield Co.</i>	
901 F.Supp. 294 (N.D. Cal. 1995)	18

State Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
(2000) 85 Cal.App.4th 1135	12
<i>Bell v. Farmers Ins. Exchange</i>	
(2004) 115 Cal.App.4th 715	18
<i>Carrington v. Starbucks Corporation</i>	
(2018) 30 Cal.App.5th 504	11
<i>Cellphone Termination Fee Cases</i>	
(2010) 186 Cal.App.5th 1380	18
<i>Chavez v. Netflix, Inc.</i>	
(2008) 162 Cal.App.4th 43	12, 13

1	<i>Clark v. American Residential Services, LLC</i>	
2	(2009) 175 Cal.App.4th 785	18
3	<i>Coalition for L. County Planning etc. Interest v. Bd. of Supervisors</i>	
4	(1977) 76 Cal.App.3d 241	13-14
5	<i>Consumer Privacy Cases</i>	
6	(2009) 175 Cal.App.4th 545	14
7	<i>Dunk v. Ford Motor Co.</i>	
8	(1996) 48 Cal.App.4th 1794	7, 8, 12
9	<i>Graham v. DaimlerChrysler Corp.</i>	
10	(2004) 34 Cal.4th 553	14
11	<i>Ketchum v. Moses</i>	
12	(2001) 24 Cal.4th 1122	13
13	<i>Laffitte v. Robert Half Int'l, Inc.</i>	
14	(2016) 1 Cal.5th 480	12, 13
15	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i>	
16	(1980) 103 Cal.App.3d 573	7
17	<i>Mallick v. Superior Court</i>	
18	(1979) 89 Cal.App.3d 434	8
19	<i>Maria P. v. Riles</i>	
20	(1987) 43 Cal.3d 1281	12
21	<i>Naranjo v. Spectrum Sec. Servs., Inc.</i>	
22	(2023) 88 Cal.App.5th 937	11
23	<i>Price v. Starbucks Corp.</i>	
24	(2011) 192 Cal.App.4th 1136	10
25	<i>Richmond v. Dart Industries, Inc.</i>	
26	(1981) 29 Cal.3d 462	7
27	<i>Serrano v. Priest</i>	
28	(1977) 20 Cal.3d 25	12, 13
	<i>Stambaugh v. Superior Court</i>	
	(1976) 62 Cal.App.3d 231	7
	<i>Thayer v. Wells Fargo Bank</i>	
	(2001) 92 Cal.App.4th 819	13
	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
	(2012) 203 Cal.App.4th 1112	11

1	<i>Wershba v. Apple Computer, Inc.</i>	
2	(2001) 91 Cal.App.4th 224	8, 12
3	<i>Westside Community for Independent Living, Inc. v. Obledo</i>	
4	(1983) 33 Cal.3d 348	12
5	<u>State Statues</u>	
6	8 Cal. Code Regs. § 13520.....	11
7	Labor Code § 226(e)	10, 12
8	Labor Code § 1194.....	12
9	Labor Code § 2699.....	11, 12
10	<u>Unpublished Cases</u>	
11	<i>Anthony Controulis, et al. v. Anheuser-Busch, LLC</i>	
12	Case No. BC518518	
13	Los Angeles County Superior Court.....	18-19
14	<i>Ashker v. Sayre</i>	
15	Case No. 05-03759 CW	
16	2011 WL 825713 (N.D. Cal. 2011)	17
17	<i>Damontae Levinston, et al. v. Commerce Distribution Company LLC, et al.</i>	
18	Case No. 22STCV05730	
19	Los Angeles County Superior Court.....	19
20	<i>Fidelina Rangel v. Forest River, Inc.</i>	
21	Case No. CIVD1706616	
22	San Bernardino County Superior Court.....	18
23	<i>Koreisz v. On Q Financial Inc.</i>	
24	Case No. 56-2018-00517126-CU-OE-VTA	
25	Ventura County Superior Court.....	19
26	<i>Target Wage and Hour Cases</i>	
27	Case No. JCCP 5259, Lead Case No. CIVSB2209126	
28	San Bernardino County Superior Court.....	18
	<i>Torres Dawson, et al. v. Wonderful Pistachios and Almonds, LLC</i>	
	Case No. BCV-17-100848	
	Kern County Superior Court.....	19

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Ruben Hernandez, Patrick Joseph Neims, Arturo Ramirez, and Miguel Moreno
4 (“Plaintiffs”) hereby submit this Memorandum of Points and Authorities in support of their
5 Motion for Final Approval of this Class Action Settlement (the “Settlement”) on behalf of all
6 current and former non-exempt employees who worked for either and/or both Defendants Neovia
7 Logistics Services, LLC and Neovia Logistics Distribution, LP (“Defendants”) in California
8 between October 28, 2018 and December 27, 2023 (the “Class Period”). Plaintiffs and Defendants
9 are referred to collectively as “the Parties.”

10 This is a \$2,950,000.00 non-reversionary Settlement, in which all participating Settlement
11 Class members will automatically receive payments without the need to submit a claim form. This
12 results in average Individual Settlement Payments of approximately \$553.49 to each of the 2,035
13 participating Settlement Class members, with the highest Individual Settlement Payment expected
14 to be approximately \$2,336.17. Further, this Settlement provides additional consideration to the
15 State of California and 1,348 Allegedly Aggrieved Employees for settlement of Plaintiffs’ claim
16 for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”),
17 resulting in average additional individual PAGA payments of approximately \$18.55, with the
18 highest additional individual PAGA payment expected to be approximately \$43.63. This is a fair
19 and reasonable resolution of the disputed wage and hour claims at issue in this case considering
20 the significant litigation risks that Plaintiffs faced. After receiving notice of the proposed
21 Settlement and the estimated Individual Settlement Payments, zero Settlement Class members
22 objected to the Settlement or opted out from participation, resulting in a 100% participation rate.

23 As explained below, the Court should grant Plaintiffs’ Motion in its entirety because:
24 (1) the Settlement Class continues to meet the requirements for class certification for settlement
25 purposes under Code of Civil Procedure § 382; (2) the Settlement is a fair, adequate, and
26 reasonable compromise of the disputed claims in this case; and (3) the amounts requested for
27 Class Counsel’s attorneys’ fees and costs, Plaintiffs’ Class Representative Enhancement
28 Payments, payment to the LWDA, and settlement administration costs are all fair, adequate, and

reasonable. In light of the foregoing, this Court should enter the [Proposed] Judgment and Order Granting Plaintiffs’ Motion for Final Approval of Class Action Settlement, Attorneys’ Fees and Costs, and Class Representative Enhancement Payments (the “[Proposed] Judgment and Order”), submitted concurrently herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants operate logistics warehouses across California, providing storage and transportation services. Declaration of Matthew K. Moen (“Moen Decl.”), ¶ 10. Like all Settlement Class members, Plaintiffs were employed by Defendants as non-exempt employees in California during the Class Period and were subject to Defendants’ allegedly unlawful wage and hour policies and practices. Declaration of Ruben Hernandez (“Hernandez Decl.”), ¶¶ 2-4; Declaration of Patrick Joseph Neims (“Neims Decl.”), ¶¶ 2-3; Declaration of Arturo Ramirez (“Ramirez Decl.”), ¶¶ 2-3; Declaration of Miguel Moreno (“Moreno Decl.”), ¶¶ 2-3.

On March 2, 2023, Plaintiff Hernandez initiated the instant action, alleging Defendants failed to: (i) pay all minimum wages owed; (ii) pay all overtime wages owed; (iii) provide all lawful meal periods; (iv) reimburse necessary business expenses; (v) issue accurate itemized wage statements; (vi) timely pay all final wages upon separation; and (vii) comply with California’s Unfair Competition laws. Moen Decl., ¶ 11. On May 23, 2023, Plaintiff Hernandez filed a First Amended Complaint, adding an eighth cause of action for civil penalties under the PAGA, based on the same underlying Labor Code violations. *Id.* On June 23, 2023, Defendants removed the action to federal court, and on January 4, 2024, the action was remanded back to San Bernardino County Superior Court. *Id.*

On October 28, 2022, Plaintiff Neims filed a separate class action complaint, Case No. CIVSB2224879 (the “*Neims Action*”), alleging the same and/or similar causes of action against Defendants as in the instant action. Moen Decl., ¶ 12. On October 13, 2023, Defendants removed the *Neims Action* to federal court. *Id.* On August 17, 2023, Plaintiff Ramirez filed a separate class action complaint, Case No. CIVSB2320935 (the “*Ramirez Action*”), alleging the same and/or similar causes of action against Defendants as in the instant action. *Id.* On October 13, 2023, Defendants removed the *Ramirez Action* to federal court. *Id.* On September 21, 2023, Plaintiff

1 Moreno filed a separate class action complaint, Case No. CIVSB2323010 (the “*Moreno Action*”),
2 alleging the same and/or similar causes of action against Defendants as in the instant action. *Id.*
3 On December 1, 2023, Plaintiff Moreno filed a Representative Action Complaint under PAGA,
4 Case No. CIVSB2328743. *Id.*

5 On September 5, 2024, Plaintiffs filed the operative Second Amended Complaint in this
6 action, adding Plaintiffs Neims, Ramirez, and Moreno as named plaintiffs, consolidating all
7 causes of action and factual allegations in the *Neims Action*, *Ramirez Action*, and *Moreno Action*
8 into this action, and consolidating all claims under the PAGA based on the facts alleged in
9 Plaintiff Hernandez’s March 2, 2023 PAGA Notice to the LWDA and November 2, 2023
10 Supplemental Notice, and Plaintiff Moreno’s September 20, 2023 PAGA Notice to the LWDA,
11 into this action. Moen Decl., ¶ 13.

12 The parties engaged in significant formal written and deposition discovery prior to
13 attending mediation. Moen Decl., ¶ 14. Through formal discovery, Defendants provided Plaintiffs
14 with timekeeping and payroll records for all putative class members spanning the putative class
15 period, as well as policy documents and employee handbooks. *Id.* Plaintiffs also took the
16 deposition of one of Defendants’ corporate witnesses under Federal Rule of Civil Procedure
17 30(b)(6), and conducted a site inspection at one of Defendants’ facilities. *Id.* Plaintiffs then
18 retained an expert with a Ph.D. in economics to analyze the produced data and create a class-wide
19 exposure model for the claims at issue. *Id.* On November 27, 2023, the Parties participated in a
20 mediation session with Steven G. Mehta, Esq., an experienced and respected wage and hour
21 mediator, during which the Parties exchanged divergent views on Defendants’ liability and
22 exposure valuations, their legal positions, and the likelihood of certification of Plaintiffs’ claims.
23 *Id.* Although the Parties adjourned mediation without reaching a settlement, they continued their
24 settlement negotiations through Mr. Mehta throughout the following weeks. *Id.* After additional
25 weeks of continued negotiations, Mr. Mehta made a mediator’s proposal that the Parties
26 ultimately accepted. *Id.* Over the following months, the Parties finalized the remaining terms of

the proposed Stipulation of Settlement (“Settlement Agreement”) that the Court preliminarily approved on September 11, 2024. *Id.*, Exhibit 1 (Preliminary Approval Order).¹

On October 24, 2024, the Court-approved Notice of Class Action Settlement (“Class Notice”) and the Notice of Individual Settlement Payment (collectively, the “Notice Packet”) was mailed via U.S. first-class mail to all 2,035 potential Settlement Class members in English and Spanish via U.S. First Class Mail. *See* Declaration of Katherine Rovertoni (“Rovertoni Decl.”), ¶¶ 3, 7, Exhibit A. Settlement Class members had until December 23, 2024, to submit disputes, objections, and/or requests for exclusion (the “Response Deadline”). *Id.*, ¶¶ 11-13. After the Response Deadline passed, zero Settlement Class members had objected to the Settlement or opted out from participation, resulting in a 100% participation rate. *Id.*, ¶¶ 11-14. Plaintiffs now respectfully submit the Settlement for this Court’s final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

The Settlement Class includes: “All current and former non-exempt employees who worked for either and/or both Defendants in California between October 28, 2018 and December 27, 2023 (the “Class Period”).” *See* Moen Decl., Exhibit 1.

B. Monetary Terms

Defendants will pay a non-reversionary Maximum Settlement Amount (“MSA”) of \$2,950,000.00. *See* Settlement, ¶ 3. The Net Settlement Amount (“NSA”) is the amount remaining from the MSA after deducting Court-approved amounts for attorneys’ fees (\$983,333.33) and verified costs reimbursement (\$82,363.20), the Class Representative Enhancement Payments (\$20,000.00 total, \$5,000.00 to each Plaintiff), settlement administration costs (\$17,990.00), and payment to the LWDA for its share of PAGA penalties (\$75,000.00). *See id.*, ¶ 4.A; Moen Decl., ¶ 16, Exhibit 3 (Expense Summary); Declaration of Jessica L. Campbell (“Campbell Decl.”), ¶ 20, Exhibit 1; Declaration of Marcus J. Bradley (“Bradley Decl.”), ¶ 2, 23-

¹ On August 19, 2024, Plaintiffs submitted the Parties’ Settlement Agreement to the LWDA in connection with the filing of the Motion for Preliminary Approval. *See* Moen Decl., ¶ 44, Exh. 2.

26, Exhibit 1.² Based on these requested amounts, the NSA is calculated to be approximately \$1,771,313.47. *See* Rovertoni Decl., ¶ 15; Settlement, ¶ 4.A.

Apex will calculate and apportion Individual Settlement Payments based on the proportionate number of workweeks worked by each participating Settlement Class member during the Class Period, as well as membership in the various subclasses. Settlement, ¶¶ 4.B.i-iv. Further, 25% of the PAGA Amount will be paid to all Allegedly Aggrieved Employees, regardless of their election to opt-out from participating in the class action portion of the Settlement, based on the proportionate number of workweeks worked by the Allegedly Aggrieved Employees during the PAGA Period. *Id.*, ¶ 4.B.i. Individual Settlement Payments will be classified as 20% wages (subject to applicable withholdings) to be reported on an IRS Form W-2, and 80% penalties and interest (not subject to withholdings) to be reported on an IRS Form 1099. *Id.*, ¶ 4.D. The portion of the PAGA Amount payable to the Allegedly Aggrieved Employees will be allocated as 100% penalties to be reported on an IRS Form 1099. *Id.* Further, Defendants will pay the employer's share of payroll taxes separate and apart from, and in addition to, the MSA. *Id.* ¶ 3.E

C. Summary of Notice Process

On October 3, 2024, Defendants provided Apex, the Court-approved Settlement Administrator, with a class data file containing the names, last known mailing addresses, Social Security numbers, and the total number of relevant workweeks worked by each potential Settlement Class member during the Class Period. Rovertoni Decl., ¶ 5. After performing address updates and verifications, Apex mailed the Notice Packet to all 2,035 potential Settlement Class members on October 24, 2024. *Id.*, ¶¶ 5-7, Exhibit A. Following the initial mailing, 155 Notice Packets were returned. *Id.*, ¶ 8. As a result of Apex's use of a skip trace, 122 Notice Packets were re-mailed. *Id.* Ultimately, only 33 Notice Packet remains undeliverable. *Id.*, ¶ 10. Settlement Class members had until December 23, 2024 to submit objections, disputes, and/or requests for

² Plaintiffs' Counsel's expense summary identifies Plaintiffs' Counsel's to-date out of pocket expenses as \$82,186.51. *See* Moen Decl., Exhibit 3; Campbell Decl., Exhibit 1; Bradley Decl., Exhibit 1. The total amount that Plaintiffs' Counsel is requesting for expense reimbursement (\$82,363.20) includes an additional \$176.69 in anticipated future costs for the filing and service of the Motion for Final Approval and the Settlement Administrator's final accounting declaration, which will be incurred by Plaintiffs' Counsel following the filing of this motion. Moen Decl., ¶ 17.

1 exclusion. *Id.*, ¶¶ 11-13. As of the date of this filing, not a single Settlement Class member
2 objected to the Settlement, disputed their workweek information included in the Notice Packet,
3 or opted out from participation, resulting in a 100% participation rate. *Id.*, ¶¶ 11-14.

4 **D. Timing of Payments**

5 Defendants will deposit the MSA (\$2,950,000.00) with the Settlement Administrator
6 within thirty (30) calendar days after the Effective Date.³ *See* Settlement, ¶ 3.B. Within ten (10)
7 business days following the full funding of the MSA, the Settlement Administrator will calculate
8 each Individual Settlement Payment and mail the Individual Settlement Payments to the
9 participating Settlement Class members. *Id.*, ¶ 4.C. Settlement Class members will have 180 days
10 from the date Apex mails the Individual Settlement Payments to cash their checks. *Id.*, ¶ 4.E. In
11 the event that there are any uncashed checks remaining after 180 days, Apex will transfer any
12 remaining funds to Working Wardrobes, the Parties' agreed-upon *cy pres* designee. *Id.*

13 The Parties submit that the distribution method called for under the Settlement Agreement
14 is proper as a party-selected distribution, subject to this Court's approval. This method of
15 distribution ensures that no portion of the MSA will be "unpaid...unclaimed or abandoned," as
16 required for C.C.P. § 384 to apply, as the value of any uncashed checks will be distributed to
17 Working Wardrobes. If approved by the Court, such a distribution procedure will result in C.C.P.
18 § 384 not applying to the instant Settlement. Accordingly, the procedures set forth in C.C.P. §
19 384 are inapplicable to the present Settlement, and the Court may approve the proposed
20 distribution method without running afoul of C.C.P. § 384, as amended.

21 **IV. ARGUMENT**

22 **A. This Court Should Confirm its Conditional Certification of the Settlement**
23 **Class for Settlement Purposes Because It Meets All of the Requirements for**
24 **Class Certification Under Code of Civil Procedure § 382**

25 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
26 and its members are too numerous for joinder to be practical; (2) the representative and absent
27 class members share a community of interest, and questions of law and fact common to the class

28

³ The "Effective Date" is defined in the Settlement Agreement as the date upon which the Court signs an
Order granting final approval of the Settlement Agreement. *See* Settlement, ¶ 2.E.

predominate over questions unique to individual class members; (3) the representative's claims are typical of the class' claims; and (4) the representative will fairly and adequately represent the class' interests. *See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Here, the Court found that the Settlement Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on September 11, 2024. *See Moen Decl.*, Exhibit 1. Since then, no events have cast doubt on the propriety of this determination, and in fact, the reaction of the Settlement Class members has been overwhelmingly supportive of the Settlement, with not a single Settlement Class member objecting to the Settlement or opting out from participation, resulting in a 100% participation rate. *See Rovertoni Decl.*, ¶¶ 11-14. The Court should therefore confirm its conditional certification of the Settlement Class.

B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims

California courts have a strong policy in favor of settlement. *See Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *See Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79. This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held, at which class members can be heard with respect to the settlement. *Id.* Now that the settlement administrator has provided notice to the Settlement Class members, Plaintiffs respectfully request that the Court finally approve the Settlement as fair, adequate, and reasonable.

1. The Settlement was Reached at Arms' Length, Through Experienced Counsel and an Experienced Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement Considering the Claims Asserted and Risks of Continued Litigation

A settlement is presumptively fair where it is reached through arms'-length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors to the settlement is small. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. In deciding whether to approve

1 a proposed settlement, a trial court has broad powers to determine if the proposed settlement is
2 fair under the circumstances of the case. *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434,
3 438. In exercising these powers, the overriding concern is to ensure that a proposed settlement is
4 “fair, adequate, and reasonable.” *Dunk, supra*, 48 Cal.App.4th at 1801 (internal quotations
5 omitted). Relevant factors for the Court to consider include, but are not limited to:

6 [T]he strength of plaintiff’s case, the risk, expense, complexity and likely
7 duration of further litigation, the risk of maintaining class action status
8 through trial, the amount offered in settlement, the extent of discovery
9 completed and the stage of the proceedings, the experience and views of
counsel, the presence of a governmental participant, and the reaction of the
class members to the proposed settlement.

10 *Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the
11 factors to each case and give due regard to “what is otherwise a private consensual agreement
12 between the parties.” *Id.*

13 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
14 might have obtained at trial on the complaint, but rather whether the settlement is reasonable
15 under all of the circumstances.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
16 250. Because settlements inherently involve compromise, even settlements providing for
17 substantially narrower relief than what may be obtained if the suit were successfully litigated can
18 be reasonable because, “the public interest may indeed be served by a voluntary settlement in
19 which each side gives ground in the interest of avoiding litigation.” *Id.* (quoting *Air Lines*
20 *Stewards, etc., Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)).

21 Here, the Settlement resulted from extensive arms’-length settlement negotiations
22 between qualified and experienced counsel with the aid of a well-respected and experienced
23 neutral third-party mediator. The Settlement is fair, adequate, and reasonable for all Settlement
24 Class members. While Plaintiffs steadfastly maintain that their claims are meritorious, Defendants
25 vigorously contest liability and the appropriateness of class treatment and, correspondingly,
26 Plaintiffs acknowledge the substantial risks and uncertainty in proceeding with class certification
27 and eventually trial, which justify a downward departure from the maximum exposure that
28 Plaintiffs calculated each claim carried.

1 As detailed in Plaintiffs’ Motion for Preliminary Approval, Defendants maintain their
2 timekeeping policies/practices comply with California law, and that they properly compensate
3 Settlement Class members for all hours worked. Moen Decl., ¶ 18. Further, Defendants assert that
4 this claim is not suitable for class treatment, as it requires individualized inquiries into whether
5 any employee underwent a security screening or COVID-19 related temperature check at all,
6 which Defendants contend was not required at all of its six California facilities, and exactly how
7 much time each employee purportedly spent while off-the-clock on any given day, which is
8 increasingly difficult since Defendants assert temperature checks took extremely minimal periods
9 of time and off-the-clock time is inherently not recorded, resulting in an unmanageable series of
10 mini-trials. *Id.*

11 As to Plaintiffs’ regular rate miscalculation allegations, Defendants argue that any bonus
12 payments made were purely discretionary, and therefore are properly excluded from the regular
13 rate of pay. Moen Decl., ¶ 19. As such, Defendants contend that Plaintiffs’ claim fails on the
14 merits. *Id.* Further, Defendants assert that this claim is unmanageable, as it requires individualized
15 inquiries into whether each bonus payment made by Defendants was discretionary or non-
16 discretionary, resulting in an unmanageable series of mini-trials. *Id.*

17 As to Plaintiffs’ meal period allegations, Defendants contend they maintained lawful meal
18 period policies/practices throughout the Class Period. Moen Decl., ¶ 20. Defendants assert that
19 Plaintiffs’ “net rest” theory will fail on the merits because employees are not required to limit
20 their meal periods to exactly 30 minutes in length, and timeclocks are located within 15-20 feet
21 of all breakrooms at each of Defendants’ facilities, meaning that employees are factually able to
22 spend a full 30 minutes in the breakroom between clocking out and clocking in. *Id.* Defendants
23 also contend that Plaintiffs’ meal period claim is not suited for class certification as individual
24 inquiries would be required to assess the amount of time it took each employee to walk between
25 Defendants’ timeclocks and breakrooms, which differed at each facility, for every meal period
26 taken, resulting in an unmanageable series of mini-trials. *Id.*

27 As to Plaintiffs’ rest period claim, Defendants maintains they authorized and permitted
28 the Settlement Class members to take all lawful rest periods to which they are entitled. Moen

Decl., ¶ 21. Defendants assert that employees are not required to go to the breakrooms for rest periods and are authorized and permitted to take 10-minute rest periods wherever they choose. *Id.* Further, Defendants assert that employees at certain facilities did not start their rest periods until arriving at the breakrooms, and therefore Plaintiffs’ claim will fail on the merits. *Id.* Defendants also assert that this claim is unmanageable and not suited for class certification, as it requires individualized inquiries into whether each employee was authorized and permitted to take a lawful rest period and on which days, which Defendants argue Plaintiffs will be unable to substantiate with any common, documentary evidence, as rest periods are not required to be recorded, resulting in an unmanageable series of mini-trials. *Id.*

In response to Plaintiffs’ allegations that Defendants failed to reimburse all necessary business expenses, Defendants argue they never required employees to purchase their own protective masks, and instead Defendants provided masks for the employees to use as part of their COVID-19 safety policies/practices. Moen Decl., ¶ 22. Further, Defendants maintain that this claim is not suited for class certification, as only one of its facilities required masks to be worn to begin with, and individual issues would predominate to determine which, if any, individual supervisors at that facility told employees they need to buy their own masks and which employees, if any, chose not to use the masks provided by Defendants, resulting in an unmanageable series of mini-trials. *Id.*

As to Plaintiffs’ derivative claims for wage statement, waiting time, and PAGA penalties, Defendants argue that Plaintiffs’ underlying claims will fail and, as a result, these derivative claims will also fail. Moen Decl., ¶ 23; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendants also maintain that Plaintiffs cannot show that the wage statement violations were “knowing and intentional,” or that the putative class members “suffer[ed] injury” as a result of the alleged violations, as required by Labor Code § 226(e) for the imposition of wage statement penalties. Moen Decl., ¶ 23; *see* Labor Code § 226(e)(1). Moreover, Defendants maintain that its good faith defenses to Plaintiffs’ underlying claims would preclude the recovery of waiting time penalties, which are only available for the “willful” failure to pay wages, and that this Court would

1 exercise its discretion to substantially reduce any PAGA penalties awarded. Moen Decl., ¶ 23;
2 *see also* 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude
3 imposition of waiting time penalties under Section 203.”); Labor Code § 2699(e)(2); *Naranjo v.*
4 *Spectrum Sec. Servs., Inc.* (2023) 88 Cal.App.5th 937; *Thurman v. Bayshore Transit Mgmt., Inc.*
5 (2012) 203 Cal.App.4th 1112, 1135; *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th
6 504 (affirming reduction of PAGA penalties to 10% of exposure).

7 These considerations not only bore heavily on the negotiations leading to the Settlement,
8 but also confirm that the Settlement is a fair, adequate, and reasonable compromise considering
9 the risks of further litigation. As detailed in Plaintiffs’ Motion for Preliminary Approval, Plaintiffs
10 and Class Counsel carefully vetted the claims at issue and conducted a detailed analysis of
11 Defendants’ data to arrive at the calculated damages figures. It was only after this comprehensive
12 analysis that the Parties participated in a mediation session and ultimately accepted the mediator’s
13 proposal for the Settlement now before the Court. Thus, while these risks are far from exhaustive,
14 they show that the Settlement is fair, adequate, and reasonable.

15 **2. *The Settlement Fairly, Reasonably, and Adequately Compensates Class***
16 ***Members Because Each Settlement Class Member Will Be Paid Based***
 on the Extent of His or Her Injury

17 Apex will calculate Individual Settlement Payment based on the proportionate number of
18 workweeks worked by each participating Settlement Class member during the Class Period
19 divided by the total number of workweeks worked by all participating Settlement Class members.
20 *See* Settlement, ¶ 4.B.iv. Further, portions of the NSA will be distributed to Settlement Class
21 members who have standing to pursue waiting time, wage statement, and PAGA penalties. *Id.*, ¶
22 4.B.i-iii. This method of distribution compensates Settlement Class members based on the
23 estimated extent of their injuries, as Settlement Class members who worked more workweeks
24 during the relevant time period were subjected to more of the alleged wage and hour violations
25 than those who worked fewer workweeks, and only Settlement Class members with standing to
26 pursue waiting time, wage statement, and PAGA penalties would have been eligible to recover
27 those penalties. Thus, the formula is tethered to the damages and penalties that Settlement Class
28 members could recover and is therefore, fair, adequate, and reasonable.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Plaintiffs and the Settlement Class members are entitled to recover their attorneys' fees and costs for their wage claims. *See* Labor Code §§ 226(e), 1194, and 2699(g). A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (finding that "when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund.").

12
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

1 The recognized advantages of the percentage method—including relative
2 ease of calculation, alignment of incentives between counsel and the class, a
3 better approximation of market conditions in a contingency case, and the
4 encouragement it provides counsel to seek an early settlement and avoid
unnecessarily prolonging the litigation—convince us the percentage method
is a valuable tool that should not be denied our trial courts.

5 *Id.*, at 503 (internal citation omitted); *see also Rawlings v. Prudential-Bache Properties,*
6 *Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (holding that the percentage of the fund method more
7 accurately reflects the results achieved than the lodestar method and “establishes reasonable
8 expectations on the part of Plaintiffs’ attorneys as to their expected recovery; and it encourages
9 early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*,
10 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in
11 common fund cases because it allows courts to award fees from the fund in a manner that rewards
12 counsel for success and penalizes it for failure.”). This is consistent with Class Counsel’s
13 experience in similar wage-and-hour class action matters. *See* Moen Decl., ¶ 24.

14 Here, Class Counsel’s fee request of \$983,333.33, representing one-third of the MSA, is
15 the same percentage sought in *Laffitte*, and is fair and reasonable based on the percentage of the
16 recovery method. Moen Decl., ¶ 24. In *Laffitte*, the California Supreme Court held that trial courts
17 have discretion to assess the reasonableness of fee awards with tools such as the “lodestar cross-
18 check,” whereby the trial court calculates counsel’s lodestar and determines whether the “lodestar
19 multiplier” needed to bring the lodestar on par with the percentage of recovery is reasonable.
20 *Laffitte*, 1 Cal.5th at 503-06. Under the lodestar method, the court multiplies the number of hours
21 reasonably expended by each attorney or legal staff member by their reasonable hourly rates, then
22 enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the
23 contingent nature of the case and the degree of success achieved. *See Serrano v. Priest*, (1977) 20
24 Cal.3d 25, 48-49; *Ketchum v. Moses*, (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo*
25 *Bank*, (2001) 92 Cal.App.4th 819, 834 (“There is no hard-and-fast rule limiting the factors that
26 may justify an exercise of judicial discretion to increase or decrease a lodestar calculation”).

27 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
28 *Chavez*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *Coalition for L.*
County Planning etc. Interest v. Bd. of Supervisors, (1977) 76 Cal.App.3d 241, 251 (approving

multiplier of approximately 12.8). In class and representative actions, where the value of the benefit conferred “can be monetized with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, (2009) 175 Cal.App.4th 545, 557.

In this case, Plaintiffs’ Counsel has a lodestar of approximately \$553,452.50, which results in a reasonable 1.77 multiplier compared to the \$983,333.33 fee request. Moen Decl., ¶ 25. A summary showing the number of hours of work performed by each attorney and paralegal is set forth below. *Id.* The billing rates used are reasonable in view of the evidence submitted herewith, and have all been previously approved by various courts throughout California.⁴ *Id.*, ¶¶ 2-7, Exhibit 4 (2024 *Laffey* Matrix); Campbell Decl., ¶¶ 3-19; Bradley Decl., ¶¶ 4-15; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-13; Declaration of Fletcher W. Schmidt (“Schmidt Decl.”), ¶¶ 2-9.

Name	Rate	Hours	Pre-Multiplier Lodestar
Marcus J. Bradley (30th Year Attorney)	\$975	36	\$35,100.00
Samuel Wong (24th Year Attorney)	\$950	11.3	\$10,735.00
Paul K. Haines (18th Year Attorney)	\$850	155.8	\$132,430.00
Lirit King (17th Year Attorney)	\$775	7.60	\$5,890.00
Jessica L. Campbell (14th Year Attorney)	\$800	20.1	\$16,080.00
Fletcher W. Schmidt (12th Year Attorney)	\$750	168.5	\$126,375.00
Matthew K. Moen (9th Year Attorney)	\$650	185.7	\$120,705.00

⁴ When setting rates, courts should utilize attorneys’ “current” rates, i.e., their rates at the time of the fee application. This accounts for the delay in receiving payment, as well as lost interest and inflation. *See Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 584 (approving use of present-day rates to account for the delay in payment); *Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air* (1987) 483 U.S. 711, 716 (“In setting fees for prevailing counsel, the courts have regularly recognized the delay factor...by basing the award on current rates.”); *Bouman v. Block*, 940 F.2d 1211, 1235 (9th Cir.1991) (affirming district court’s use of current hourly rates).

Fawn Bekam (9th Year Attorney)	\$700	132.2	\$92,540.00
Fernando Valle, Jr. (Braley Grombacher, LLP Law Clerk)	\$350	16.40	\$5,740.00
Haines Law Group, APC Firm Paralegals	\$175	44.9	\$7,857.50
Total Lodestar			\$553,452.50

As discussed above, this case presented significant risks to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Since undertaking representation of Plaintiffs, Class Counsel has devoted substantial time to this litigation without receiving any compensation to date. Moen Decl., ¶ 26. Class Counsel's efforts include conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research and analysis, engaging in substantial formal written and deposition discovery, reviewing class documents and data produced by Defendants, extensively reviewing and evaluating the produced timekeeping and payroll records with the assistance of a retained expert to build a comprehensive damages model, preparing for and attending mediation, negotiating and drafting the Memorandum of Understanding, long-form Settlement Agreement, and Notice Packet documents, preparing the Motions for Preliminary and Final Approval, overseeing the notice process, fielding questions from Settlement Class members, and otherwise litigating the case. *Id.* Given the considerable potential for adverse outcomes in this case, including, but not limited to, losing on class certification, the contingent risk borne by Class Counsel was great. The quality of Class Counsel's work, and the efficacy and dedication with which it was performed, should be equivalently compensated.

As discussed above, this case presented significant risks to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and for expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiffs, Class Counsel has expended \$82,363.20 in litigation costs and devoted substantial time to this litigation without receiving any

1 compensation to date. Moen Decl., ¶¶ 17, 27, Exhibit 3; Campbell Decl., ¶ 20, Exhibit 1; Bradley
2 Decl., ¶ 2, 23-26, Exhibit 1.

3 Class Counsel's previous experience in litigating wage and hour class actions also
4 supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and
5 defense-side wage and hour class action litigation and collectively bring 100 years of wage-and-
6 hour class and representative action litigation experience. *See* Moen Decl., ¶¶ 2-7; *see also*
7 *generally* Campbell Decl., Bradley Decl.; Haines Decl.; Schmidt Decl. Class Counsel have also
8 been certified as class counsel in numerous other cases in both State and federal court. *Id.* Class
9 Counsel's experience in similar matters was integral in evaluating the strengths and weaknesses
10 of this case and the reasonableness of the Settlement. Practice in the narrow field of wage and
11 hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and
12 federal law, as well as the procedural law of class action litigation. Because it is reasonable to
13 compensate Class Counsel equal with their skill, reputation, and experience, the requested fee
14 award of one-third of the MSA is fair and reasonable and should therefore be approved.

15 **D. The Requested Cost Reimbursement Warrants Final Approval as Fair,**
16 **Adequate, and Reasonable**

17 Class Counsel incurred and respectfully requests reimbursement of \$82,363.20 in actual
18 litigation costs, which is more than \$17,500.00 *less* than the \$100,000.00 amount preliminarily
19 approved by the Court as set out in the Settlement Agreement. Moen Decl., ¶ 27, Exhibits 1 and
20 3;⁵ Campbell Decl., ¶ 20, Exhibit 1; Bradley Decl., ¶ 2, 23-26, Exhibit 1; *see also* Settlement, ¶¶
21 3.C(4), 5. The unclaimed amount of litigation costs will be paid to the Settlement Class members
22 as part of the NSA. Settlement, ¶ 3.D. Class Counsel's request is fair, adequate, and reasonable,
23 as all these costs are documented and reasonably incurred. *See* Moen Decl., Exhibit 3; Campbell
24 Decl., Exhibit 1; Bradley Decl., Exhibit 1. Moreover, the costs Plaintiffs seek to reimburse are
25 the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer* 24 F.3d 16, 19 (9th
26 Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be

27
28 ⁵ Class Counsel utilized the expert services of Dr. J. Michael DuMond, Ph.D., of Berkeley Research Group,
to perform all expert analyses for this case, and are providing copies of all expert invoices received by
Class Counsel in support of this Motion. Moen Decl., ¶ 27, Exhibit 5.

1 charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3
2 (N.D. Cal. 2011) (“costs of reproducing pleadings, motions and exhibits are typically billed by
3 attorneys to their fee-paying clients” and are reimbursable); *Trustees of Const. Industry &*
4 *Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006)
5 (legal research costs are reimbursable); *In re Immune Response Securities Litigation* 497
6 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, legal research, copies, postage,
7 filing fees, messenger and overnight delivery costs are reimbursable).

8 Notably, not a single Settlement Class member objected to the Settlement, including Class
9 Counsel’s request for up to \$100,000.00 in reimbursement of verified costs. Rovertoni Decl., ¶ 12.
10 Because the expense reimbursements requested by Class Counsel were reasonably incurred, and
11 no Settlement Class member has objected to them, the Court should grant Class Counsel’s request
12 for \$82,363.20 in actual litigation costs reimbursement.

13 **E. The Court Should Finally Approve the Requested Settlement Administration**
14 **Costs**

15 Plaintiffs also request that the Court approve \$17,990.00 in administration costs to Apex
16 as the Settlement Administrator. Moen Decl., ¶ 28; Rovertoni Decl., ¶ 20, Exhibit B. As detailed
17 in the declaration of Katherine Rovertoni submitted concurrently with this Motion, Apex
18 performed duties in connection with this Settlement that were integral in effectuating the
19 Settlement and the Notice process. Among other things, Apex calculated each Settlement Class
20 member’s Individual Settlement Payment, updated addresses contained in the class data supplied
21 by Defendants, formatted the Notice Packets for mailing, mailed Notice Packets to all 2,035
22 individuals who were eligible to take part in the Settlement, kept the Parties informed of the status
23 of the Notice mailing through weekly reports, and otherwise administered the Settlement. *See*
24 *generally*, Rovertoni Decl. For these reasons, Apex’s requested costs are fair, reasonable, and
25 adequate, and should be finally approved.

26 ///

27 ///

28 ///

1 **F. The Court Should Finally Approve Plaintiffs’ Requested Class**
2 **Representative Enhancement Payments Because the Requested Amounts are**
3 **Fair, Adequate, and Reasonable Considering Plaintiffs’ Efforts and the Risks**
4 **Assumed on Behalf of the Class**

5 Courts routinely approve service awards to compensate named plaintiffs for the services
6 they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins.*
7 *Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs
8 for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* 901 F.Supp. 294
9 (N.D. Cal. 1995) (approving \$50,000.00 service payment). The Court may award service awards
10 “to compensate [Plaintiffs] for work done on behalf of the class, to make up for financial or
11 reputational risk undertaken in bringing the action. *Id.* at 958-59. The common law in both
12 California state and federal courts has long recognized the important function of enhancement
13 payments to incentivize plaintiffs to bring class actions to vindicate others’ rights. *See Cellphone*
14 *Termination Fee Cases* (2010) 186 Cal.App.5th 1380, 1394 (stating that the question of whether
15 a class representative was entitled to a service award was answered in the affirmative in *Clark v.*
16 *American Residential Services, LLC*, (2009) 175 Cal.App.4th 785).

17 Here, Plaintiffs seek Class Representative Enhancement Payments of \$5,000.00 each
18 (\$20,000.00 in total) and believe that this request is reasonable given Plaintiffs’ considerable
19 efforts in this case, the risks Plaintiffs undertook on behalf of the Settlement Class members, and
20 the general release of all claims against Defendants subject to a waiver of California Civil Code
21 section 1542. Moen Decl., ¶ 29; Hernandez Decl., ¶¶ 5-6; Neims Decl., ¶¶ 4-14; Ramirez Decl.,
22 ¶¶ 4-14; Moreno Decl., ¶¶ 4-14; Settlement, ¶ 2.C. The amounts requested as Class Representative
23 Enhancement Payments for the named Plaintiffs are warranted and within the range of service
24 award amounts regularly approved by courts throughout California. *See, e.g., Target Wage and*
25 *Hour Cases*, Case No. JCCP 5259, Lead Case No. CIVSB2209126, San Bernardino County
26 Superior Court (awarding \$10,000 enhancement awards to each of fourteen (14) named
27 plaintiffs); *Fidelina Rangel v. Forest River, Inc.*, Case No. CIVD1706616, San Bernardino
28 County Superior Court, Hon. David Cohn, presiding (awarding \$10,000 enhancement award to
the named plaintiff); *Anthony Controulis, et al. v. Anheuser-Busch, LLC*, Case No. BC518518,
Los Angeles County Superior Court (awarding \$10,000 enhancement awards to each of two

1 named plaintiffs); *Damontae Levinston, et al. v. Commerce Distribution Company LLC, et al.*,
2 Case No. 22STCV05730, Los Angeles County Superior Court (awarding \$10,000 enhancement
3 awards to each of four named plaintiffs); *Torres Dawson, et al. v. Wonderful Pistachios and*
4 *Almonds, LLC*, Kern County Superior Court, Case No. BCV-17-100848 (same); *Koreisz v. On Q*
5 *Financial Inc.*, Ventura County Superior Court, Case No. 56-2018-00517126-CU-OE-VTA
6 (same).

7 Plaintiffs' requested enhancement payments are intended to recognize the significant time
8 and effort that Plaintiffs have expended on behalf of the Settlement Class for the duration of this
9 litigation. Among other things, Plaintiffs' efforts include searching for relevant documents for
10 use in the lawsuit, providing factual information to their attorneys, holding various phone calls
11 with their attorneys to discuss the claims in the lawsuit and Defendants' policies and practices,
12 assisting their attorneys to help prepare for mediation, making themselves available during
13 mediation to assist and answer factual questions posed by the mediator, reviewing and providing
14 input regarding the settlement in this case, otherwise assisting their attorneys in moving the case
15 towards resolution, the significant risks Plaintiffs undertook by serving as the named plaintiffs,
16 and the fact that they agreed to a general release of all claims subject to a waiver of Civil Code §
17 1542. Moen Decl., ¶ 29; Hernandez Decl., ¶¶ 5-6; Neims Decl., ¶¶ 4-14; Ramirez Decl., ¶¶ 4-14;
18 Moreno Decl., ¶¶ 4-14; Settlement, ¶ 2.C.

19 Plaintiffs have invested considerable time and effort into seeing this litigation through
20 resolution, and the Settlement Class, who would not be receiving anything if it were not for
21 Plaintiffs' decision to pursue these claims, will benefit from their participation. Moen Decl., ¶ 30.
22 Plaintiffs attached their name to this lawsuit for the benefit of the Settlement Class members and
23 to the risk of themselves, and agreed to a broader, general release of claims beyond what other
24 Settlement Class members are releasing through this action, including a waiver of Civil Code
25 section 1542. *Id.*; Hernandez Decl., ¶¶ 5-6; Neims Decl., ¶¶ 4-14; Ramirez Decl., ¶¶ 4-14; Moreno
26 Decl., ¶¶ 4-14; Settlement, ¶ 2.C. Plaintiffs deserve to be compensated for these unique risks and
27 their broad release of claims, which other Settlement Class members are not subject to. Plaintiff
28 Ruben Hernandez estimates spending approximately 15 hours in total, Plaintiff Joseph Neims

estimates spending approximately 100 hours in total, Plaintiff Arturo Ramirez estimates spending approximately 40 hours in total, and Plaintiff Miguel Moreno estimates spending approximately 30 hours in total, performing these duties on behalf of the Settlement Class. *See* Hernandez Decl., ¶ 6; Neims Decl., ¶ 12; Ramirez Decl., ¶ 12; Moreno Decl., ¶ 11. Moreover, after receiving notice of the proposed enhancement payments, not a single Settlement Class member objected to the proposed awards. *See* Rovertoni Decl., ¶ 12. Given Plaintiffs' significant contributions to this case, the risks they undertook, and the lack of any objection from Settlement Class members, Plaintiffs' requested enhancement payments are proper and justified as part of the Settlement and should be finally approved.

V. CONCLUSION

For the reasons stated herein, Plaintiffs respectfully submit that this Court should grant Plaintiffs' Motion in its entirety and adopt the [Proposed] Judgment and Order Granting Plaintiffs' Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class Representative Enhancement Awards, submitted herewith.

Dated: December 30, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By:


Matthew K. Moen
Attorneys for Plaintiffs