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all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

MARK FRANKLIN on behalf of
himself, all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

DESERT HAVEN ENTERPRISES; and
DOES 1-100,

Defendants.

Case No. BCV-23-101153
(Consolidated with Case No. BCV-23-101829)

*[Assigned for All Purposes to the
Honorable Gregory A. Pulskamp; Div. J]*

**PLAINTIFF MARK FRANKLIN'S
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT**

Date: October 30, 2024
Time: 8:30 a.m.
Division: J
Location: 1215 Truxton Avenue
Bakersfield, California 93301

Complaint Filed: April 13, 2023
Trial Date: None Set

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1 **I. INTRODUCTION**

2 This motion seeks approval of a non-reversionary \$1,750,000 proposed wage and hour
3 class action settlement reached between Plaintiff Mark Franklin (hereinafter “Plaintiff” or “Mr.
4 Franklin”) and Defendant Desert Haven Enterprises (hereinafter “Defendant” or “Desert Haven”)
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 non-exempt, hourly employees of Defendant
7 in the State of California from April 13, 2019 through June 1, 2024, and includes, but is not limited
8 to, job positions Defendant refers to as Trainers and Consumers.² To date, there is a 99.7%
9 participation rate amongst Class Members—that is, only two requests for exclusion have been
10 received by the Settlement Administrator.³ In addition, to date, there are no objections to the
11 settlement.⁴ **The proposed settlement is projected to pay an average estimated payment of**
12 **\$1,472.69 per Class Member, with a high payment of \$2,712.50.** In addition, Aggrieved
13 Employees are currently estimated to receive an additional payment that averages \$31.29, with a
14 high payment of \$43.29.

15 In addition to funding the Gross Settlement Amount, as part of the settlement, Defendant
16 agreed to make policy changes. Defendant agreed to implement the following policies and
17 practices: Updated policies and procedures, including but not limited to compliant meal and rest
18 period policies for on-site service employees, time and attendance tracking policies for all
19 employees and consumers, updated sick leave policies and procedures.⁵

20 To date, this matter has required 541 hours of attorney time from Class Counsel. This
21 litigation involved investigations into the claims asserted, discovery, the production and review of
22 documents from Defendant, a full day of mediation, and evaluation of continuing litigation. As
23 will be demonstrated herein, the attorneys’ fee request of \$612,500 (“Attorney Fee Award”), which

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

26 ² Exhibit 1 at Section I, Paragraph 5, Page 1.

27 ³ Declaration of Madely Nava of APEX Class Action, LLC, in Support of Motion for Final
Approval of Class Action Settlement (“Nava Dec.”) ¶ 11.

28 ⁴ Nava Dec. ¶ 12.

⁵ Exhibit 1 at Section II, Paragraph 54, Page 8.

1 represents 35% of the Gross Settlement Amount (“GSA”), is fully supported using the percentage
2 fee method. The Attorney Fee Award is also supported under the lodestar cross-check method.
3 Plaintiff further moves for reimbursement of litigation costs and expenses in the amount of
4 \$22,346.18 (“Cost Award”), originally estimated not to exceed \$50,000, for costs incurred in
5 litigating this matter. Plaintiff also moves for final approval of the payment in the amount of
6 \$15,000 to Plaintiff (this payment is referred to as the “Class Representative Service Payment”) to
7 compensate him for agreeing to a general release of his claims against Defendant and his vital role
8 in representing the Class Members and spearheading the case to seek actual and substantial
9 monetary relief for the Class. Additionally, Plaintiff moves for final approval of Administration
10 Costs in the amount of \$10,000 to the Settlement Administrator, APEX Class Action, LLC
11 (hereinafter “APEX”) for the costs and fees of administering settlement (“Administration Costs”).

12 The requested Attorney Fee Award, Cost Award, Class Representative Service Payment,
13 and Administration Costs were fully disclosed to the Class Members when the Class Notice was
14 mailed to them. Most importantly, to date, the settlement and all of its terms have received support
15 from Class Members as not a single Class Member has objected to the settlement and only two (2)
16 Class Members have requested to be excluded from it. With a currently estimated average and
17 high payout to Settlement Class Members of \$1,472.69 and \$2,712.50, respectively, the settlement
18 is fair, adequate, and reasonable. In addition, Aggrieved Employees are currently estimated to
19 receive average and high payouts of \$31.62 and \$43.29, respectively. The Court is, therefore,
20 respectfully requested to consider the Class Members’ endorsement of the settlement and grant
21 final approval of the settlement, and approve of the Attorney Fee Award, Cost Award, Class
22 Representative Service Payment, and Administration Costs in the amounts as preliminarily
23 approved of by this Court and disclosed to the Class Members, and as requested herein.

24 As demonstrated herein, Class Counsel is convinced that the proposed settlement is in the
25 best interest of the Class based on the negotiations and a detailed knowledge of the issues present
26 in this matter. The length and risks of trial and perils of litigation that affect the value of the claims
27 were all carefully weighed by Class Counsel. In addition, the affirmative defenses asserted by
28 Defendant, Defendant’s contentions that Class Members were compensated for all wages due and

provided lawful meal and rest breaks, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages, and various possible delays and appeals were all carefully considered by Class Counsel in arriving at the proposed settlement.

II. BACKGROUND, INVESTIGATION, AND LITIGATION HISTORY

a. Background and Litigation History

Defendant provides training to and staffs individuals with developmental disabilities with employers throughout the Antelope Valley of California. Defendant employs “trainers” and “consumers.” Consumers is the term Desert Haven uses to refer to individuals with developmental disabilities that Desert Haven trains and staffs. Trainers are employees that Desert Haven employs to train and work alongside the consumers.

On April 13, 2024, Plaintiff filed a class action complaint against Defendant (the “Class Action”). The complaint alleges the following causes of action against Defendant: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay Overtime; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy; (6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (7) Failure to Pay all Wages Due at the Time of Termination; and (8) Violation of Unfair Competition Law. (Declaration of David Mara, Esq. in Support of Plaintiff’s Motion for Preliminary Approval (“Mara Dec.”) ¶ 12).

On April 7, 2023, Plaintiff provided notice to the Labor and Workforce Development Agency (“LWDA”) in accordance with the PAGA. Thereafter, on June 12, 2023, Plaintiff filed an action against Defendant that alleges causes of action under the Private Attorneys General Act of 2004 (the “PAGA Action”). This case was designated with Case Number BCV-23-101829. The complaint sought civil penalties under the PAGA in relation to the following alleged violations suffered by allegedly similar aggrieved employees: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay Overtime; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Pay all Wages Due at the Time of Termination; (6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; and (7)

1 Failure to Adopt a Compliant Sick Pay Policy. (Mara Dec. ¶ 13).

2 On June 2, 2023, Defendant filed a notice of removal of the Class Action to the U.S. District
3 Court for the Central District of California. Thereafter, Plaintiff filed a motion to remand the matter
4 back to state court, which led to Defendant agreeing to stipulation to remand the matter back to
5 state court and the matter returned to the Superior Court of California, for the County of Kern.
6 (Mara Dec. ¶ 14).

7 On September 28, 2023, the Parties filed a stipulation to consolidate the Class Action and
8 the PAGA Action. The Court granted this stipulation on October 3, 2023. (Mara Dec. ¶ 15).

9 **b. Discovery and Investigation**

10 After filing, the Parties engaged in extensive informal discovery and Plaintiff conducted
11 investigation into the claims. As part of this discovery, Defendant produced hundreds of
12 documents and policies including, but not limited to, wage and hour policies – including meal and
13 rest period policies – that covered putative class members, Plaintiff’s time and pay records, and a
14 sampling of time and pay records for Class Members. (Mara Dec. ¶ 16).

15 **c. The Parties Agreed to Attend Mediation**

16 The Parties attended an all-day mediation with respected wage and hour mediator Mark
17 Rudy on January 16, 2024. This mediation was unsuccessful. Thereafter, the Parties continued to
18 engage in negotiations at arms-length, with Defendant producing additional documents and data.
19 The Parties engage in additional mediation conversations with Mr. Rudy. As a result of these
20 continued settlement discussions, all of which were facilitated through the mediator, the Parties
21 were able to reach a settlement, which was reduced to a MOU that was executed on April 18, 2024.
22 The Parties then met and conferred over all the terms of the settlement and finalized their
23 agreement in the Parties’ Agreement. The Parties seek final approval of the Agreement in the
24 instant motion. (Mara Dec. ¶ 17; *see also* Exhibit 1 attached thereto). On August 14, 2024, the
25 Parties entered a Stipulation to Amend the Terms of Settlement Agreement Paragraph 58(A). Due
26 to a scrivener’s error, the Agreement contained an erroneous calculation of affected workweeks.
27 Through the stipulation, the Parties amended the total number of affected workweeks contained in
28 Paragraph 58(A) of the Agreement to 92,005. (Mara Dec. ¶ 18).

III. TERMS OF THE PROPOSED SETTLEMENT

Under the terms of the settlement, Defendant will create a settlement fund of \$1,750,000.

a. Deductions From the Settlement

The Parties have agreed (subject to and contingent upon the Court's approval) that this action be settled and compromised for the non-reversionary total sum of \$1,750,000 ("Gross Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of \$612,500 (35% of the GSA) to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administering the settlement, and securing Court approval; (b) litigation costs of \$22,346.18 (originally estimated at \$50,000; (c) a Class Representative Enhancement Payment to the named class representative, Mark Franklin, in the amount of \$15,000 in consideration for prosecuting this class action, serving as Class Representative, work performed, and risks undertaken for the payment of attorneys' fees and costs in the event he had been unsuccessful in the matter; (d) claims administration fees and expenses to APEX Class Action Administration (hereinafter "APEX"), in the amount of \$10,000; and (e) \$75,000 allocated to Plaintiff's claims under the PAGA.

b. Calculation of the Settlement Payments to Class Members and PAGA Group Members

After all Court-approved deductions from the GSA, it is estimated that \$1,015,153.82 ("Net Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement payment, will be distributed to Participating Class Members.⁶ Subject to the terms and conditions of the settlement, Participating Class Members will receive a pro-rated share of the Net Settlement Amount, less applicable withholdings, based on the number of workweeks they worked in California while employed by Defendant during the Class Period. The maximum amount that each Settlement Class Member is entitled to receive is determined by multiplying Net Settlement Amount by a ratio that is determined by dividing a Participating Class Member's total workweeks worked during the Class Period in California by the total number of workweeks worked during the Class Period by all Settlement Class Members employed by Defendant as expressed in the

⁶ Participating Class Members are Class Members who do not submit a valid and timely request to exclude themselves from this Settlement. (Exhibit 1 at Section I, Paragraph 35, Page 5).

1 following formula: Net Settlement Amount multiplied by Participating Class Member workweeks
2 divided by all workweeks worked by all Participating Class Members. (Exhibit 1 at Section III,
3 Paragraph 63(A)(i), Page 10).

4 The individual settlement payments will be divided into a “wage portion” to compensate
5 Participating Class Members for alleged unpaid wages and a “non-wage portion” to compensate
6 Participating Class Members for alleged interest and penalties. The wage portion will make up
7 10% of each Participating Class Members’ Individual Settlement Share, and the non-wage portion
8 will make up 90% of each Participating Class Members’ Individual Settlement Share. (See Exhibit
9 1 at Section III, Paragraph 63(B), Page 10).

10 In addition, each PAGA Group Members will receive a proportionate share of the PAGA
11 Fund that is allocated for distribution to PAGA Group Members (i.e., 25% of the PAGA Payment).
12 PAGA Group Members will receive a pro-rated share of the Net PAGA Settlement Amount, less
13 applicable withholdings, based on the number of pay periods they worked in California while
14 employed by Defendant during the PAGA Period. The maximum amount that each PAGA Group
15 Member is entitled to receive is determined by multiplying the Net PAGA Settlement Amount by
16 a ratio that is determined by dividing a PAGA Group Member’s total pay periods worked during
17 the PAGA Period in California by the total number of pay periods worked during the PAGA Period
18 by all PAGA Group Members employed by Defendant as expressed in the following formula: Net
19 PAGA Settlement Amount multiplied by PAGA Group Member pay periods divided by all pay
20 periods worked by all PAGA Group Members. (Exhibit 1 at Section III, Section 64(A), Page 11).
21 Each PAGA Group Member’s Individual PAGA Settlement Share will be apportioned as 100%
22 penalties. (Exhibit 1 at Section III, Page 64(B), Page 11).

23 **c. Release of Claims**

24 The Participating Class Members will, upon the Effective Date, release all claims during
25 the Class Period that were pled or could have been pled based on a reasonable interpretation of the
26 facts included in the operative complaint. (Exhibit 1 at Section I, Paragraph 38, Page 5; *see also*
27 Section III, Paragraph 68, Pages 21-22). The PAGA Group Members will, upon the Effective Date,
28 release all claims during the PAGA Period for civil penalties that were pled or could have been

1 pled based on a reasonable interpretation of the facts included in the operative complaint. Further,
2 the State of California will release all claims raised in the PAGA demand letter submitted to the
3 Labor and Workforce Development Agency on or about April 7, 2023. (Exhibit 1 at Section I,
4 Paragraph 39, Pages 5-6; *see also* Section III, Paragraph 69, Page 22). The releases will release
5 Defendant, its subsidiaries, DBA's, and affiliated and/or funding entities, and each of its past or
6 present officers, directors, board members, employees and agents which could be jointly liable
7 with Defendant for the claims alleged. (Exhibit 1 at Section I, Paragraph 40, Page 6).

8 In addition, Plaintiff agrees to a general release of his claims against Defendant. (Exhibit
9 1 at Section III, Paragraph 70, Page 22).

10 **d. Notice to the Class**

11 On July 15, 2024, Counsel for the Defendant provided Apex with the Class Data file,
12 comprising the names, social security numbers, last known mailing addresses, and the total number
13 of relevant workweeks worked by each Settlement Class Member. (Nava Dec. ¶ 5). The Class Data
14 File was successfully uploaded to the Settlement Administrator, where it underwent a thorough
15 review to identify any duplicates or potential inconsistencies. (*Id.*).

16 The initial Class Data contained 625 of individuals. As part of the preparation for mailing,
17 the names and addresses contained in the Class Data were processed against the National Change
18 of Address ("NCOA") database, maintained by the United States Postal Service ("USPS"), for
19 purposes of updating and confirming the mailing addresses of the Class Members before mailing
20 of the Class Notice. (Nava Dec. ¶ 6). The NCOA contains requested change of addresses filed with
21 the USPS. On August 20, 2024, the Class Notice was mailed, via U.S First Class Mail, to 625
22 individuals contained in the Class Data. (Nava Dec. ¶ 7). These Class Members had until October
23 4, 2024, to respond to the settlement.

24 After mailing, it was determined that 65 individuals had been inadvertently excluded from
25 the Class Data. Defendant provided the data for these individuals to the Settlement Administrator.
26 This brought the number of Class Members to 690. On September 13, 2024, the Class Notice was
27 mailed to these individuals. (Nava Dec. ¶ 7). These individuals have until October 28, 2024, to
28 respond to the settlement.

1 As of the filing of this motion, 72 Class Notices were returned to the Settlement
2 Administrator as undeliverable. (Nava Dec. ¶ 8). The Settlement Administrator conducted a
3 computerized skip trace on the returned Class Notices in order to acquire updated addresses for
4 the purpose of re-mailing the Class Notices. (*Id.*). This skip trace effort resulted in obtaining 58
5 updated addresses, to which Settlement Administrator re-mailed the Class Notice via U.S. First
6 Class Mail. (Nava Dec. ¶¶ 7-8). As such, to date, 14 Class Notices are considered undeliverable.
7 These 14 Class Notices represent 2% of the Class Members. (Nava Dec. ¶ 10).

8 During the notice process, three individuals contacted Class Counsel and asserted that they
9 should be included in the Class. Class Counsel met and conferred with Defendant over these
10 individuals and the Parties agreed to include them as Class Members. As such, the number of Class
11 Members increased to 693. (Nava Dec. ¶ 13).

12 To date, the settlement has received support from the Class Members. Not a single Class
13 Member has objected to the settlement. (Nava Dec. ¶ 12). In addition, the settlement administrator
14 has only received two requests for exclusion. (Nava Dec. ¶ 11). Therefore, currently, 691 Class
15 Members are participating in the settlement, meaning 99.7% of the Class Members are
16 Participating Class Members. (Nava Dec. ¶ 14). Should the Class response change prior to the final
17 approval hearing, the Parties will file a declaration from the Settlement Administrator advising the
18 Court of such change.

19 **e. Distribution of Funds**

20 Defendant shall wire or otherwise provide to the Settlement Administrator the Gross
21 Settlement Amount no later fifteen (15) calendar days after the Effective Date.⁷ (Exhibit 1 at
22 Section I, Paragraph 21, Page 3; *see also* Section III, Paragraph 67(M)(i), Page 20). Within ten
23

24 ⁷ The Effective Date of the settlement is: (i) The date the Court enters Judgment granting final
25 approval of the settlement, if there are no objectors at the time of the final approval hearing; (ii) if
26 there are objectors at the time of the final approval hearing, the date by which an appeal of the
27 judgment must occur, if no notice of appeal is filed; or (iii) if there is a timely notice of appeal
28 filed, the date of final affirmance of the Judgment on an appeal, the expiration of the time for, or
the denial of, a petition to review the Judgment, or if review is granted, the date of final affirmance
of the Judgment following review pursuant to that grant. (Exhibit 1 at Section I, Paragraph 18,
Page 3).

1 (10) calendar days after the Settlement Administrator's receipt of the Gross Settlement Amount,
2 the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to
3 Participating Class Members; (2) the Net PAGA Settlement Amount to Aggrieved Employees; (3)
4 the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as
5 approved by the Court; (4) the Class Representative Enhancement Payments paid to the Class
6 Representatives, as approved by the Court; (5) the Administration Costs, as approved by the Court;
7 and (6) the LWDA Payment to the LWDA. (Exhibit 1 at Section I, Paragraph 17, Page 3; *see also*
8 Section III, Paragraph 67(M)(ii), Page 20).

9 Participating Class Members and Aggrieved Employees must cash or deposit their
10 Individual Settlement Share checks within one hundred and eighty (180) calendar days after the
11 checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar
12 days after mailing, the Settlement Administrator will send a reminder postcard indicating that
13 unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become
14 non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain
15 uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice,
16 the Settlement Administrator will, within two hundred (200) calendar days after the checks are
17 mailed, cancel the checks. All funds associated with the Individual Settlement Share checks
18 returned as undeliverable and funds associated with those checks remaining un-cashed shall be
19 tendered to Legal Aid at Work. Legal Aid at Work is a nonprofit legal services organization that
20 has been assisting low-income, working families for more than 100 years. Legal Aid at Work's
21 Wage Protection Program represents low-wage workers who are the victims of wage violations.
22 The wage claims made by Legal Aid at Work's clients are often the same type of claims made in
23 wage-and-hour class actions brought by workers under the federal Fair Labor Standards Act and
24 under California wage-and-hour laws. (Exhibit 1 at Section III, Paragraph 67(O), Page 21).

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1 **IV. ARGUMENT**

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

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

10 In deciding whether to approve a class settlement, a court evaluates whether the proposed
11 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
12 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.* (9th Cir. 1982)
13 688 F.2d 615, 625); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 742 43. A
14 court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801.
15 However, “a presumption of fairness exists where: (1) the settlement is reached through arm’s-
16 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
17 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
18 is small.” *Dunk*, 48 Cal. App. 4th at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a
19 court should consider additional relevant factors, including the strength of the plaintiff’s case
20 compared to the settlement amount; the risk, expenses, complexity, and likely duration of further
21 litigation; and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th
22 at 1802; see also *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723; see also *Boyd v.*
23 *Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

24 At the time of preliminary approval, the Court was provided with sufficient information to
25 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
26 until after the Class had an opportunity to respond to the settlement.⁸ Subject only to the Class’s

27 ⁸ See Memorandum of Points and Authorities in Support of Motion for Preliminary Approval,
28 pages 15-19. In addition to the *Dunk* factors, Class Counsel also detailed the other 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 reaction to the settlement, the Court preliminarily presumed the settlement was fair, adequate and
2 reasonable. To date, not a single objection to the settlement has been submitted by any Class
3 Member to the Settlement Administrator. Thus, the settlement is entitled to the presumption that
4 it is fair and in all other respects proper and should be finally approved.

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

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

8 Class Counsel applies for an award of attorneys' fees in the sum of \$612,500 (35% of the
9 GSA), and litigation costs of \$22,346.18 (originally estimated not to exceed \$50,000). (Mara Dec.
10 ¶ 19). California courts have recognized an appropriate method for determining an award of
11 attorneys' fees is based on a percentage of the total value of benefits to Class Members by the
12 settlement, also known as the "common fund" method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34
13 (*Serrano III*) 34 ("when a number of persons are entitled in common to a specific fund, and an
14 action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation
15 of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund."); *Serrano*
16 *v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the
17 benefit of all parties, the trial court acts within its equitable power to prevent the other parties'
18 unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir.
19 1993) (the percentage of the fund method for calculating attorney's fees more accurately reflects
20 the results achieved for the putative class than the lodestar method and "establishes reasonable
21 expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages
22 early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities Litigation*,
23 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in
24 common fund cases because it allows courts to award fees from the fund 'in a manner that rewards
25 counsel for success and penalizes it for failure.'").

26 The purpose of the common fund/percentage approach is to "spread litigation costs
27 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
28 burden alone." *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. In *Quinn v.*

1 *State of California* (1995) 15 Cal.3d 162, 167, the Court stated: “[O]ne who expends attorneys’
2 fees in winning a suit which creates a fund from which others derive benefits may require those
3 passive beneficiaries to bear a fair share of the litigation costs.” Similarly, in *City and County of*
4 *San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that
5 the common fund doctrine has been applied “consistently in California when an action brought by
6 one party creates a fund in which other persons are entitled to share.” The reasons for applying the
7 common fund doctrine include: “...fairness to the successful litigant, who might otherwise receive
8 no benefit because his recovery might be consumed by the expenses; correlative prevention of an
9 unfair advantage to the others who are entitled to share in the fund and who should bear their share
10 of the burden of its recovery; encouragement of the attorney for the successful litigant, who will
11 be more willing to undertake and diligently prosecute proper litigation for the protection or
12 recovery of the fund if he is assured that he will be properly and directly compensated should his
13 efforts be successful.” *Id.*

14 Indeed, the California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that
15 using the percentage method has many advantages:

16 The recognized advantages of the percentage method - including relative ease of
17 calculation, alignment of incentives between counsel and the class, a better
18 approximation of market conditions in a contingency case, and the encouragement
19 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.

20 *Id.* at 503 (internal citation omitted).⁹ Because there is a defined and traceable benefit to the Class,
21 the Court can base an award of attorneys’ fees using a ‘common fund’ approach.

22 Moreover, trial courts have “wide latitude” in assessing the value of attorneys’ fees and
23 their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao*
24 *v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,

25
26 ⁹ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools
27 such as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold
28 further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . .
they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
reasonableness of a requested percentage fee”).

1 1132 (The “experienced trial judge is the best judge of the value of professional services rendered
2 in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.

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

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

22 Where the amount of a settlement is a “certain easily calculable sum of money,” California courts
23 may calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and Brown,
24 California Practice Guide, Civil Procedure Before Trial, Chapter 14, § 14:145; *Dunk, supra*, 48
25 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in class and
26 representative actions because “it better approximates the workings of the marketplace than the
27 lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49. The purpose of the common
28 fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries

1 so that the active beneficiary does not bear the entire burden alone.” *Vincent, supra*, 557 F.2d at
2 769.

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

11 When the lawsuit was originally filed, the prospect of a long, drawn-out battle with a
12 defendant represented by experienced counsel, was almost a certainty. By taking on this “battle”
13 on a contingency basis, Class Counsel risked substantial economic loss if the results were not
14 successful. This substantial risk is the reason that the courts approve the use of the percentage
15 method when a settlement is obtained by the efforts of class counsel. *See Vizcaino v. Microsoft*
16 (9th Cir. 2002) 290 F.3d 1043, 1048-49 (quotations omitted) (discussing the risks of engaging in
litigation without certainty of compensation).

17 Under the terms of the Agreement, Desert Haven will pay a Gross Settlement Amount of
18 \$1,750,000. An award of attorneys’ fees is to be calculated as a percentage of the total value of
19 benefits made available to the Class Members under the settlement. In light of Class Counsel’s
20 prosecution and resolution of the case, the requested Attorneys’ Fees are appropriate and
21 reasonable.

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

1 Class Counsel have obtained a substantial recovery on behalf of Plaintiff and the Class.
2 Thus, the requested Attorney Fee Award is appropriate. In short, Class Counsel's fee request of
3 \$612,500 (which represents 35% of the GSA) is in line with awards in similar cases in California
4 and nationwide and demonstrates that Class Counsel's fee request is consistent with market rates
5 and is reasonable.

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

7 The requested fee falls in the mid-range of percentage class fee awards, which generally
8 range from 20% to 50% of a common fund. Historically, courts have awarded fees as high as fifty
9 percent (50%) of the settlement, depending on the circumstances of the case. *Conte & Newberg,*
10 *Newberg on Class Actions* (4th Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.*
11 (D.D.C. 1981) 526 F. Supp. 494 (awarding attorneys' fees in the amount of 45% of the settlement
12 amount of \$7.3 million); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y.
13 1979) 480 F. Supp. 1195 (awarding approximately 53% of the settlement amount as attorneys'
14 fees). California courts routinely approve class action attorneys' fees awards "averag[ing] around
15 one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court
16 found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions).
17 The Supreme Court has explained that "percentage of the fund method more accurately reflects
18 the results achieved." *Laffitte*, 1 Cal. 5th at 439. The requested fee constitutes fair compensation
19 for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis
20 and compensates Class Counsel for their efforts, as well as the result achieved for the benefit of
21 the Class. Numerous state and federal courts in California routinely approve fee requests equal to
22 or greater than 35%. In short, Class Counsel's fee request of \$612,500 (which represents 35% of
23 the GSA) is in line with awards in similar cases in California and nationwide and demonstrates
24 that Class Counsel's fee request is consistent with market rates and is reasonable.

25 **iii. A Lodestar Cross-Check with a Modest Multiplier Confirms the
Reasonableness of the Requested Fee**

26 Class Counsel's fee request is reasonable when calculated using the lodestar method. Under
27 the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent
28

1 on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20
2 Cal. 3d 25, 48. The court then enhances this lodestar figure by a “multiplier” to account for a range
3 of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
4 success achieved. *Id.* at 49; see also *Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM*
5 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92
6 Cal.App.4th 819, 834, (“[t]here is no ... rule limiting the factors that may justify an exercise of
7 judicial discretion to [adjust the] lodestar”).

8 Courts “routinely enhance[] the lodestar to reflect the risk of non-payment in common fund
9 cases.” *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051; *Graham v.*
10 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 (“One of the most common fee enhancers [...] is for contingency risk.”). Such an enhancement “mirrors the established practice in the private
11 legal market of rewarding attorneys’ fees for taking the risk of nonpayment by paying them a
12 premium over their normal hourly rates for winning contingency cases.” *Vizcaino*, 220 F.3d at
13 1051. A risk multiplier also serves to bring the financial incentives for enforcing important rights
14 “into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-
15 for-service basis.” *Ketchum*, 24 Cal.4th at 1132. In determining whether or not to enhance or
16 reduce the lodestar, California courts take into account multiple factors, including: the time and
17 labor required; the skill requisite to perform the legal services properly; the preclusion of other
18 employment by the attorney due to the acceptance of the case; the contingent nature of the fee; the
19 amount involved and results obtained; the experience, reputation, and ability of the attorney; and
20 awards in similar cases. *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 822.

21
22 Class Counsel has worked 541 hours to date on this case and have calculated the lodestar
23 fee on those hours at \$389,675 at rates reflecting those currently earned in the marketplace. (Mara
24 Dec. ¶ 20, Exhibit 5; Declaration of Peter Horton, Esq. (“Horton Dec.”) ¶ 13). All of the work and
25 tasks performed by Class Counsel were reasonable and necessary to the prosecution of this case
26 and are reflected in the result achieved. (Mara Dec. ¶ 21).

27 This was a highly contested matter which required a significant amount of time and labor.
28 Class Counsel had to investigate and analyze documents and data for Plaintiff and a sampling of

1 Class Members. In addition, as part of the above investigation and analysis, Plaintiff had to marshal
2 the evidence in a manner in which it could be adjudicated on a class-wide basis. So often, lawyers
3 unskilled in the class action aspect of wage and hour cases do not pay attention to or put the work
4 into how the evidence must be presented for class-wide adjudication. Strong class-wide cases
5 perish in the hands of inexperienced counsel because the case has not been worked up to succeed
6 at certification. Class Counsel here has considerable experience in class litigation and, from the
7 beginning of the case, is marshalling the evidence with a sharp focus on class-wide proof needed
8 for the matter to get certified. This case was no different. This filtering of voluminous evidence
9 into class-wide proof while keeping an eye on the merits of the litigation required a considerable
10 amount of attorney time and skill. (Mara Decl. ¶ 22).

11 Most importantly, all services were performed by Class Counsel on a contingent basis.
12 (Mara Dec. ¶ 23; Horton Dec. ¶ 10). Both California and federal courts recognize that attorneys
13 should be compensated for taking on such contingent risks and provided with financial incentives
14 to enforce important rights and protections like those at issue in this case. See, e.g., *Vizcaino*, 290
15 F.3d at 1051; *Ketchum*, 24 Cal.4th at 1132-33. Here, Class Counsel bore the risk that, in spite of
16 all of their efforts and skill employed, there may be no recovery.

17 Class Counsel respectfully requests a fee of \$612,500, which, based on the total attorney
18 hours expended and rates, would require a 1.58 multiplier to raise the generated fees of \$389,675
19 to the requested amount. Far greater multipliers have been awarded in similar cases, and the total
20 amount of fees sought by Class Counsel is also reasonable compared to fees awarded in like cases.
21 Courts routinely enhance lodestar amounts based on multipliers that “range from 2 to 4 or even
22 higher.”¹⁰ Thus, consideration of the lodestar method as a cross-check to the percentage figure
23 sought strongly supports the reasonableness of the requested fee award. Class Counsel moves for
24 and respectfully requests that the Court grant attorneys’ fees in the amount of \$612,500.

25 ¹⁰ *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 255 (2001); see, e.g., *Vizcaino*, 290 F.3d
26 at 1051 (approving multiplier of 3.65); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123
27 (2d Cir. 2005) (approving multiplier of 3.5); *Craft v. County of San Bernardino*, 624 F. Supp. 2d
28 1113, 1125 (C.D. Cal. 2008) (awarding multiplier of 5.2 and collecting cases with cross-check
multipliers ranging from 4.5 to 19.6); *Glendora Community Redevelopment Agency v. Demeter*,
155 Cal.App.3d 465, 479-80 (1984) (approving fee award with multiplier of 12).

1 **iv. Class Counsel's Hourly Rates Are Reasonable**

2 Class Counsel's hourly rates are between \$600 and \$800 and are in line with rates typically
3 approved in wage and hour class action litigation and which rates have been approved by Courts
4 in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego
5 County Superior Courts. (Mara Dec. ¶ 24; Exhibit 2, Westlaw Court Express's Legal Billing
6 Report, Volume 14, Number 3, California Region for December 2012; Exhibit 3, 2014 Declaration
7 of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; Exhibit 4, 2012
8 National Law Journal Survey of Hourly Billing Rates for Partners and Associates).

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

15 Class Counsel's skill and experience support their hourly rates. Their practice is limited
16 exclusively to litigation, focusing on the representation of employees in wage and hour and
17 consumer class action matters. (Mara Dec. ¶¶ 2-11; Horton Dec. ¶¶ 2-5). As leading attorneys in
18 the field of wage and hour class action litigation, Plaintiff's counsel continually monitors the
19 prevailing market rates charged by both defense and plaintiff law firms and set the billing rates of
20 their attorneys and paralegals/law clerks to be consistent with the prevailing market rates in the
21 private sector for attorneys and staff of comparable skill, qualifications and experience. Other wage
22 and hour attorneys working as class counsel before California courts charge comparable if not
23 higher rates. (Mara Dec., Exh. 2, Westlaw Court Express's Legal Billing Report, Volume 14,
24 Number 3, California Region for December 2012; Exh. 3, 2014 Declaration of Richard M. Pearl
25 in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; Exh. 4, 2012 National Law Journal
26 Survey of Hourly Billing Rates for Partners and Associates). Therefore, as they are in line with
27 those of the relevant community, Class Counsel's hourly rates are reasonable.

28 ///

v. Class Counsels' Total Hours are Reasonable

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

Class Counsel has expended a total of 319.6 hours on this case. The work performed by Class Counsel in order to achieve a settlement that will provide valuable consideration to the Class, averaging a \$1,472.69 settlement payment per Class Member, with the highest estimated award being \$2,712.50, is outlined by Class Counsel in the declarations submitted herewith. (Mara Dec. ¶¶ 25, 30; Horton Dec. ¶ 12). Class Counsel have been actively involved in this case, prior to the commencement of this action and all the way up to the present, and Class Counsel's dedication to providing representation in the case has precluded other employment. Here, Class Counsel's many tasks, in summary form, included the following: pre-filing investigation and legal research; communicating with the Class Representative; discussions with Class Members; communications with co-counsel; researching and investigating California's ever-evolving wage and hour laws regarding compensation, overtime, meal and rest periods, itemized wage statements, waiting time penalties, and California's Unfair Competition Law; conducting investigation into Defendant's pay-structures, policies for its non-exempt employees; drafting and filing pleadings; engaging in conferences with Defense Counsel regarding a variety of issues throughout the litigation and settlement; reviewing Defendant's removal documents; researching law relevant to removal and remand; drafting and filing motion to remand; analyzing records produced by Defendant; drafting the mediation brief and performing mediation damages and exposure models; preparing for and attending mediation; drafting and revising the settlement agreement and the Notice to the Class; drafting preliminary approval papers; working with Settlement Administrator on the notice process; reviewing, revising, and proofing Notice papers from the Settlement Administrator;

1 reviewing weekly status reports from the Settlement Administrator regarding Class participation;
2 reviewing and editing the Settlement Administrator's declaration; drafting final approval papers,
3 and preparing for and appearing at the Final Approval Hearing. (Mara Dec. ¶¶ 25, 30; Horton Dec.
4 ¶ 12).

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

8 **vi. Costs of Litigation**

9 Class Counsel seeks reimbursement of the litigation costs and expenses of \$22,346.18.
10 (Mara Dec. ¶ 32). These costs were all reasonable and necessary to the prosecution of this case
11 and the results achieved and are fair and reasonable.

12 **c. The Class Representative Service Payment is Reasonable**

13 Class Counsel seeks approval of a Class Representative Service Payment to the named
14 Plaintiff in the sum of \$15,000. In agreeing to the settlement, Plaintiff has agreed to a general
15 release of his claims against Defendant. This general release is far greater than the release being
16 given by other Class Members. This payment not only compensates Plaintiff for the work he
17 undertook in this case, but also for the claims and potential claims he may have against Defendant
18 that he is releasing. Since the inception of this case, Plaintiff has put the Class's interests ahead of
19 his own. This payment compensates Plaintiff for the claims that he forwent bringing for the
20 betterment of the Class Members.

21 There are also other factors supporting the request that Plaintiff receive \$15,000. The
22 requested Class Representative Service Payment is reasonable in light of the benefits Plaintiff has
23 conferred upon the entire Class, resulting in payments averaging at \$1,472.69 with a high payment
24 of \$2,712.50. The requested award is appropriate and reasonable based upon Plaintiff's time and
25 effort expended on this case, the risks he faced, and the outcome of this case. Plaintiff has
26 submitted a declaration detailing the efforts and time he expended on behalf of the Class in order
27 to advance this case to its successful conclusion. There is no question that this case would not have
28 reached the same result but for Plaintiff's involvement and input at all stages of the litigation.

1 It should be noted that service awards are particularly important to plaintiffs in wage and
2 hour cases because they promote the important public policies underlying the wage and hour laws.
3 This strong policy is codified in California Labor Code section 90.5, which provides that “[i]t is
4 the policy of this state to vigorously enforce minimum labor standards in order to ensure employees
5 are not required or permitted to work under substandard unlawful conditions . . .” Cal. Lab. Code
6 § 90.5. Nonetheless, the California Supreme Court has noted that “retaliation against employees
7 for asserting statutory rights under the Labor Code is widespread,” despite anti-retaliation statutes
8 designed to protect employees. *Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61. In this context,
9 class representatives should be rewarded for assuming the risk of retaliation for the sake of class
10 members. *See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.

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

1 willing to take this risk, and it is clear that Plaintiff, here, championed a cause on behalf of others
2 with potentially huge monetary risks.

3 Courts routinely approve service payments, or incentive awards, to compensate named
4 plaintiffs for the services they provide and the risks they incur during class litigation. See *In re*
5 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers*
6 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
7 representatives); Manual § 21.62 n.971 (noting that service payments are warranted); *Cook v.*
8 *Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y.
9 1997) (“present or past employee whose present position or employment credentials or
10 recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his
11 or her name and efforts to the prosecution of litigation at some personal peril, a substantial
12 enhancement award is justified”); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th
13 Cir. 1974) (“We also think there is something to be said for rewarding those drivers who protect
14 and help to bring rights to a group of employees who have been the victims of discrimination.”).

15 Moreover, the modern-day work force is mobile, with employees holding several jobs over
16 the span of their career. It is also true that prospective employers in this computer, high-tech age
17 “Google” and/or do extensive background checks and have access to court databases to see if
18 applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiff’s conduct will not be
19 lost on a prospective employer who has to choose between an applicant who has never sued an
20 employer and one who has done so. The requested award far from compensates Plaintiff for
21 opportunities he may lose in the future because of the exercise of a Constitutional right to Petition
22 the Courts for redress of a grievance.

23 Based on the foregoing, the \$15,000 Class Representative Service Payment to the named
24 Class Representative is fair, appropriate, and justified in light of the work performed, risks
25 undertaken for payment of fees and costs if this case had not been successfully concluded, stigma
26 on future employment opportunities, and the benefits all Class Members.

27 **d. The Administration Costs are Reasonable**

28 The Court-approved Settlement Administrator was responsible for formatting, printing and

1 mailing the Class Notices. The Settlement Administrator was responsible for responding to Class
2 Member inquiries, providing weekly status reports, answering questions from Counsel for the
3 Parties, and providing a declaration to document its duties and responsibilities under the
4 settlement. Plaintiff now requests that the Court finally approve the Settlement Administration
5 Costs in the amount of \$10,000 to APEX for services rendered and to be rendered for the notice
6 and settlement administration process.

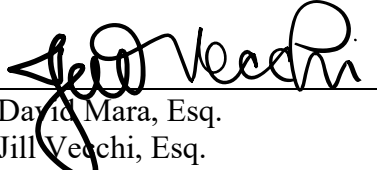
7 Following the grant of final approval, the Settlement Administrator's duties will continue
8 in order to calculate and mail the individual settlement payments to Participating Class Members,
9 perform tax reporting obligations, disburse other payments as ordered by the Court, and perform
10 such other duties as set forth in the Agreement. Administration Costs in the amount of \$10,000 to
11 APEX for services rendered and to be rendered is fair and reasonable and should be granted.

12 **V. CONCLUSION**

13 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
14 of the settlement, and award Class Counsel attorneys' fees in the sum of \$612,500 and litigation
15 expenses of \$22,346.18 to Class Counsel, Class Representative Service Payment in the sum of
16 \$15,000 to Plaintiff, Administration Costs in the amount of \$10,000 to APEX, and a payment to
17 the LWDA in the amount of \$56,250 (which is 75% of \$75,000 allocated to Plaintiff's claims
18 under PAGA).

19
20 Dated: October 8, 2024

MARA LAW FIRM, PC

21
22 
23 David Mara, Esq.
Jill Vecchi, Esq.

24 Representing Plaintiff MARK FRANKLIN,
25 on behalf of himself, all others similarly situated,
26 and on behalf of the general public.
27
28