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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

SOMALIA GOODWIN, JUAN CARLOS QUEVEDO, DUSTIN JOHNSON, and JOHN A. MCGEHEE, as individuals, on behalf of themselves and on behalf of all persons similarly situated, Plaintiffs, vs. SAVE MART SUPERMARKETS, LLC, a California Limited Liablity Company; and DOES 1 through 50, inclusive, Defendants.	CASE NO.: (Lead) STK-CV-UOE-2023-2062; SCV-273343 (MCGEHEE class action) filed in Sonoma County; SCV-273793 (MCGEHEE PAGA action) filed in Sonoma County **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CLASS REPRESENTATIVE SERVICE PAYMENTS, AND ATTORNEYS' FEES AND COSTS** Hearing Date: August 26, 2025 Hearing Time: 9:00 a.m. Dept: 10D

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TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court and California Code of Civil Procedure section 382, on August 26, 2025, at 9:00 a.m., in Department 10D of the above-entitled Court, located at 180 E. Weber Street, Stockton, California, Plaintiffs Somalia Goodwin, John A. McGehee, Dustin Johnson, and Juan Carlos Quevedo ("Plaintiffs") individually and on behalf of a class of similarly situated individuals, will, and hereby do, move this Court for entry of an Order:

1. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;

2. Confirming the appointment of Plaintiffs as the Class Representatives for settlement purposes;

3. Confirming the appointment of Crosner Legal, PC; James Hawkins, APLC; Blumenthal Nordehaug Bhowmik De Blouw LLP; and Haynes Law Group, APC as Class Counsel;

4. Granting final approval of the Class Action and PAGA Settlement Agreement ("Settlement Agreement");

5. Approving an award of $1,866,666.66 in attorneys' fees to Class Counsel;

6. Approving an award of $36,394.01 in litigation costs to Class Counsel;

7. Approving an award of $109,990.00 in costs to APEX Class Action Administration, LLC ("APEX") for its settlement administration services;

8. Approving Class Representative Service Payments of $10,000.00 to each Plaintiff ($40,000.00 in total) for their service as Class Representatives;

9. Approving an award of $200,000.00 to the Labor & Workforce Development Agency ("LWDA") for its share of civil penalties under the Private Attorneys General Act ("PAGA") (25% of which, or $50,000.00 will go to the PAGA Members); and

10. Entering final judgment in the form of the [Proposed] Final Approval Order and Judgment filed herewith.

This Motion is made on the following grounds: (l) the Settlement Class continues to meet the requirements for class certification for settlement purposes under Cal. 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 amounts for Class Counsel's attorneys' fees and costs, settlement administration costs, and the Class Representative Service Payments are all fair, adequate, and reasonable; and (5) in light of the foregoing, the [Proposed] Final Approval Order and Judgment submitted herewith should be entered so as to give finality to, and allow for disbursements from, the Settlement.

This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the supporting declaration of Brandon Brouillette and exhibits attached thereto; the supporting declaration of Paul K. Haines and exhibits attached thereto; the supporting declaration of Kyle Nordrehaug and exhibits attached thereto; the supporting declaration of James Hawkins and exhibits attached thereto; the declarations of Plaintiffs; the supporting declaration of Stacey Shim of APEX Class Action, LLC and 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.

Respectfully submitted,
BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
Dated: August 4, 2025 HAINES LAW GROUP, APC
CROSNER LEGAL, P.C
JAMES HAWKINS APLC

By: ______________________
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Somalia Goodwin, John A. McGehee, Dustin Johnson, and Juan Carlos Quevedo ("Plaintiffs") submit this memorandum of points and authorities in support of their Motion for Final Approval of the Class Action Settlement (the "Settlement") with Defendant Save Mart Supermarkets, LLC ("Defendant" or "Save Mart") (together with Plaintiffs, the "Parties"). Under the Settlement, Defendant has agreed to pay a non-reversionary Gross Settlement Amount of $5,600,000.00 to the following Settlement Class:

> All current or former hourly-paid or non-exempt employees employed by the Defendant in the State of California during the Class Period.

In this non-reversionary Settlement, all Participating Class Members will receive automatic payments without the need to submit a claim form, resulting in an average Individual Class Payment of approximately $133.89 to each Participating Class Member. This is a favorable result for Class Members, especially in light of the significant litigation risks that Plaintiffs faced. Moreover, after receiving notice of the proposed Settlement and projected estimated Individual Class Payments, **not a single Class Member has objected to the Settlement and only three (3) Class Members out of 24,997 have opted out of the Settlement, resulting in a 99.98% participation rate**.

As explained further below, the Court should grant Plaintiffs' Motion in its entirety because: (1) the Settlement Class continues to meet the requirements for certification for settlement purposes under Cal. Code Civ. Proc. § 382; (2) the Settlement is a fair, adequate, and reasonable compromise of the disputed claims in this case; and (3) the requested amounts for attorneys' fees and costs, settlement administration costs, and class representative service payments are all fair, adequate, and reasonable. In light of the foregoing, Plaintiffs respectfully submit that the Court should enter the [Proposed] Final Approval Order and Judgment submitted herewith.

II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

Defendant Save Mart operates around 194 Save Mart, Lucky, and FoodMaxx stores in neighborhoods throughout California and Western Nevada, and is California's largest regional, full-service grocery chain. Plaintiffs were all employed by Defendant in California during the Class Period and were classified by Defendant as non-exempt employees. *See generally*, Plaintiffs' Declarations.

This global class settlement will resolve four related wage and hour class action lawsuits. On March 2, 2023, Plaintiff Goodwin filed the first Class Action Complaint against Save Mart in the Superior Court of the State of California, County of San Joaquin. *See* Agreement, at ¶ 1. On March 3, 2023, Plaintiff Goodwin submitted a notice to the Labor and Workforce Development Agency ("LWDA") alleging various Labor Code violations under the Private Attorneys General Act of 2004 ("PAGA").

Soon thereafter, on May 22, 2023, July 10, 2023, and November 27, 2023, Mr. McGehee, Mr. Johnson, and Mr. Quevedo filed their Complaints in Sonoma County Superior Court and Contra Costa Superior Court, respectively, alleging the same causes of action that Goodwin asserted.

The Parties engaged in a full day of private mediation with Steven Mehta, Esq., a highly respected mediator with extensive wage and hour experience, and with the assistance of the mediator the Parties accepted a mediator's proposal in May 2024.

In order to effectuate the Settlement of all matters on a global basis, the Parties stipulated to the filing of a Third Amended Complaint ("TAC") in this Action, incorporating all Plaintiffs and claims alleged in the matters identified above. *See* Declaration of James Hawkins ("Hawkins Decl."), at ¶ 6.

On March 27, 2025 this Court issued its Order granting Preliminary Approval of this matter. *Id.*, **Exhibit A** (Preliminary Approval Order).

B. DISCOVERY, MEDIATION, AND SETTLEMENT

Over the course of this litigation, Defendant, through both formal and informal discovery, produced time and pay records, wage statements, documents regarding its wage and hour policies and practices during the Class Period, a class list, and information regarding the total number of current and former employees, the estimated total amount of workweeks and pay periods, average hourly rates, and other relevant data, allowing for the full and complete analysis of liabilities and defenses to the claims in the Action. Hawkins Decl., ¶ 7. Plaintiffs retained an expert to assist Plaintiffs in conducting a comprehensive analysis of the data produced by Defendant to prepare valuations of the claims for the class. *Id.*

In April 2024, the Parties participated in a full-day mediation with Steven G. Mehta, Esq., a respected mediator of wage and hour representative and class actions. Hawkins Decl., ¶ 8. Following the mediation, after continued negotiations, the Parties agreed to settle the Actions based on a mediator's proposal. *Id*. The Parties then negotiated the final terms of the Settlement. *Id*.

C. <u>PRELIMINARY APPROVAL AND MAILING OF NOTICES</u>

On January 30, 2025, Plaintiffs submitted the proposed Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement" or "Settlement Agreement" or "Agreement") to this Court with their Motion for Preliminary Approval of Class Action Settlement. Hawkins Decl., at ¶ 2, **Exhibit B**. On March 25, 2025, the Court issued a tentative ruling conditionally granting Preliminary Approval on the condition that James Hawkins file a proper jurat to his declaration, which was inadvertently omitted. On the same day, an amended declaration was filed to adhere to the Court's tentative ruling. On March 27, 2025 this Court issued its Preliminary Approval Order. *Id.*, **Exhibit A** (Preliminary Approval Order).

On May 28, 2025, the Court-approved Class Notice was provided to Class Members, and Class Members had until July 12, 2025 to submit objections, requests for exclusion, or workweek disputes. *See* Declaration of Stacey Shim of Apex Class Action, LLC ("Shim Decl."), ¶¶ 7, 11-13. As of the date of this filing, Apex Class Action, LLC ("Apex") received no objections, only three (3) requests for exclusion, and no workweek disputes. *Id.,* at ¶¶ 11-13. Now that the notice has been provided to the Settlement Class and the Notice process is complete, Plaintiffs respectfully submit the Settlement for this Court's Final Approval.

III. <u>SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS</u>

A. <u>Settlement Class Definition</u>

As noted, the Settlement Class means: "All current or former hourly-paid or non-exempt employees employed by the Defendant in the State of California during the Class Period." Settlement Agreement, ¶ 5.

B. <u>Monetary Terms</u>

The Settlement provides for Defendant to pay a non-reversionary Gross Settlement Amount of $5,600,000.00. *See* Agreement, ¶ 12, Hawkins Decl., ¶ 14. The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting requested attorneys' fees ($1,866,666.66) and litigation costs and expenses ($36,394.01), proposed Class Representative Service Payments of $10,000.00 to each Plaintiff (totaling $40,000.00), settlement administration costs ($109,990.00), and the amount set aside as PAGA civil penalties ($200,000.00). *See* Agreement, ¶¶ 34-37; Shim Decl., ¶¶ 15, 19. Based on these requested amounts, the Net Settlement Amount is estimated at $3,346,949.33. Shim Decl., ¶ 15.

Individual Class Payment to Participating Class Members will be calculated by dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Class Members during the Class Period, and multiplying the result by each Participating Class Member's Workweeks. *See* Agreement, ¶ 13. In addition to the Net Settlement Amount, the 25% share of "PAGA Penalties" (i.e., $50,000.00) allocated to "PAGA Members" (i.e., Plaintiffs and all non-exempt employees who worked for Defendants in the State of California from March 2, 2022 through the earlier of the date the Court preliminarily approves the Settlement Agreement, or the date the number of workweeks during the Class Period is 10 percent more than 1,600,000 work weeks (the "PAGA Period")) will be calculated and distributed based on the proportionate number of PAGA Pay Periods worked during the PAGA Period. *Id*., at ¶ 18.

Participating Class Member's Individual Class Payments shall be allocated as 80% penalties and interest and 20% percent as wages. *See* Agreement, ¶ 61. Individual PAGA Payments will be reported on IRS 1099 Forms. *Id*. Defendant's share of employer-side payroll taxes shall be paid by Defendants separately, and in addition to, the Gross Settlement Amount. *Id.*, at ¶ 63.

C. <u>Summary of the Notice Process</u>

On April 16, 2025, Counsel for the Defendant provided Apex with the class data file, comprising the names, social security numbers, last known mailing addresses, and the total number of relevant workweeks worked by each Settlement Class Member ("Class List"). Shim Decl., ¶ 5. After receiving this data, all 25,000 names and addresses listed in the Class List underwent verification and updating against the National Change of Address ("NCOA") database in an attempt to update Class Members' addresses as accurately as possible. *Id.*, at ¶ 6. The NCOA contains requested address changes filed with the United States Postal Service ("USPS"). *Id.* To the extent that an updated address was found in the NCOA database, the updated address was used for the mailing of the Class Notice. *Id.* To the extent that no updated address was found in the NCOA database, the original address provided by Defendants was used for the mailing of the Class Notice. *Id.* As a result of the NCOA search, Apex was able to locate 1,498 updated addresses. *Id.,* at ¶ 8.

On May 28, 2025, the Notice Packet was mailed to all 25,000 individuals listed in the Class List via U.S First Class Mail. Shim Decl., ¶ 7, Exhibit A. As of the filing of this Motion, 1,884 Notice Packets were returned to Apex as undeliverable. *Id.,* ¶ 8. Apex performed a computerized skip trace on the 1,884 returned Notice Packets that did not have a forwarding address, in an effort to obtain an updated address for the purpose of re-mailing the Notice Packet. *Id.* As a result of this skip trace, 1,498 updated addresses were obtained and the Notice Packets were promptly re-mailed to those Class Members, via U.S. First Class Mail. *Id.*, at ¶ 9. Ultimately, a total of 386 Notice Packets are deemed undeliverable as no updated addresses were found notwithstanding the skip tracing. *Id.,* at ¶ 10.

Class Members had until July 12, 2025 to submit objections, workweek disputes, and/or requests for exclusion. Shim Decl., ¶¶ 11-13. Apex received no objections from Class Members and only three (3) requests for exclusion, and no workweek disputes *Id*. Accordingly, the participation rate is **99.98%,** and the average estimated Individual Class Payment is approximately $133.89, the highest estimated payment being $314.82, and the lowest estimated payment being $1.91. *Id.*, at ¶¶ 14, 16. Additionally, the 21,184 Aggrieved Employees who were employed during the PAGA Period will receive a portion of the $50,000.00 PAGA Penalties allocated to Aggrieved Employees. *Id.*, at ¶ 17. The highest individual PAGA Payment is estimated to be approximately $6.07, the average individual PAGA Payment is estimated to be approximately $2.36, and the lowest individual PAGA Payment is estimated to be approximately $0.04. *Id.*, at ¶ 18.

D. <u>Funding of the Settlement and Uncashed Settlement Funds</u>

Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to Apex no later than thirty (30) calendar days after the Effective Date ("Funding Date"). *See* Agreement, ¶ 33. Within ten (10) calendar days after Defendant fund the Gross Settlement Amount, Apex will issue payment to: (a) Participating Class Members and PAGA Members; (b) the Labor and Workforce Development Agency; (c) Plaintiffs; and (d) Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement. *Id.,* at ¶ 58.

For Participating Class Members who elect to receive their Individual Class Payments and/or Individual PAGA Payments via check, those Participating Class Members will have 180 days to cash their checks. Agreement, at ¶ 59. Before mailing any checks, Apex will update the recipients' mailing address using a NCOA search. *Id*. For any Individual Class Payment or Individual PAGA Payment check that is uncashed after 180 days of issuance, Apex shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund, in the name of the Class Member to whom the check was issued, thereby leaving no "unpaid residue." *Id*.

IV. <u>ARGUMENT</u>

A. <u>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</u>

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest, and questions of law and fact common to the class predominate over questions unique to individual class members; (3) the representative's claims are typical of the class's claims; and (4) the representative will fairly and adequately represent the class's interests. *See Richmond v. Dart Industries, Inc*., 29 Cal.3d 462, 470 (1981).

Here, this 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 March 27, 2025. *See generally* Hawkins Decl., Exhibit A. Subsequent to the Court's order granting preliminary approval, no events have cast doubt on the propriety of this determination, and in fact, the reaction of the Settlement Class has been overwhelmingly supportive of the Settlement, with not a single objection submitted and only three (3) requests for exclusion submitted, resulting in a **<u>99.98% participating rate</u>**. *See* Shim Decl., ¶¶ 11-12, 15. This Court should therefore confirm its conditional certification of the Settlement Class.

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

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

1. The Settlement was Reached at Arm's Length, Through Experienced Counsel and an Experienced Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement

A settlement is presumptively fair where it is reached through arm's-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.*, 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court,* 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, *supra*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited to:

> [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery 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.

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

"In the context of a settlement agreement, the test is not the maximum amount Plaintiff might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because settlements inherently involve compromise, even settlements providing for substantially narrower relief than likely would be obtained if the suit were successfully litigated can be reasonable because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id*. (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)). In addition, courts review the discovery process and information received through it to aid them in assessing whether the parties sufficiently developed the claims and their supporting factual bases before reaching settlement. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129-31 (2008). Information is sufficient where it allows the parties and the court to form "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Clark v. Am. Residential Svcs. LLC*, 175 Cal.App.4th 785, 801 (2009). This requirement exists so that the parties can provide the Court with "a meaningful and substantiated explanation of the manner in which the factual and legal issues have been evaluated." *Kullar*, 168 Cal.App.4th at 132-33.

2. *The Settlement is Fair, Adequate and Reasonable in Light of the Risks Faced by Plaintiffs*

The Settlement resulted from extensive arm's-length negotiations between qualified counsel, a full-day mediation before an experienced wage and hour mediator, along with additional months of negotiating the long-form settlement agreement, and is fair, adequate, and reasonable for all Class Members. While Plaintiffs steadfastly maintain their claims are meritorious, Plaintiffs acknowledge their position included substantial risks and uncertainty, which justifies a downward departure from the maximum exposure each claim potentially carried.

As detailed in Plaintiffs' Motion for Preliminary Approval, there is a significant risk of non-certification and/or not prevailing on the merits with respect to each of Plaintiffs' claims. *See* Haines Decl. in support of preliminary approval, ¶ 13. A number of defenses asserted by Defendant present serious threats to the claims of the Plaintiffs and the other Class Members. *Id.* Defendant asserted that Defendant's practices complied with all applicable Labor laws. *Id.* Defendant argued that Class Members were paid for all time worked and that all work time was properly recorded. *Id.* Defendant contends that their meal and rest period policies fully complied with California law and Defendant did not fail to provide the opportunity for legally required meal and rest breaks. *Id.* Defendant argues that their payment of significant meal period premiums is evidence of lawful practices. *Id.*

Defendant argued its break policies were fully compliant with California law, and that it provided all required meal periods and thereby met its obligations under the Labor Code and applicable Wage Orders and under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1017, where the California Supreme Court held an employer's obligation with respect to meal periods is to "relieve its employee of all duty, with the employee thereafter at liberty to use the meal period for whatever purpose he or she desires." But, the court went on, "the employer need not ensure that no work is done." *Id*. Further, Defendant argued to the extent employees missed a break or took a non-compliant break, any such discrepancies were aberrational and against company policy and a myriad of individual issues would be required to determine whether the potential violation resulted from employee choice or some other reason. Consequently, per Defendant, individualized inquiries would dominate on this issue and render class certification inappropriate. Defendant also emphasized it paid thousands of dollars in meal period premiums for documented alleged violations in its good faith efforts to comply. *See* Brouillette Decl. in support of Preliminary Approval, ¶ 31.

On the expense reimbursement claim, Save Mart argued it provided employees with cell phones to the extent those employees needed one to perform their job duties. Otherwise, per Save Mart, to the extent employees used their own phones, it was purely for personal convenience, was not necessary to their employment, and therefore was not reimbursable. Defendant also emphasized resolution of the underlying liability issues relating to the reimbursement claim would also require a slew of individualized inquiries. It would require the Court to determine, inter alia, whether business expenses were incurred, whether the expenses were "reasonable" and "necessary," whether Save Mart had actual or constructive knowledge of any unreimbursed business expenses, and so on. *See* Brouillette Decl. in support of Preliminary Approval, ¶ 33.

These considerations not only bore heavily on the parties' negotiations leading up to the Settlement, but also confirm that the Settlement is a fair and reasonable compromise in view of the risk of further litigation. As detailed in Plaintiffs' Motion for Preliminary Approval, Plaintiffs carefully vetted the claims at issue, and with the help of a retained expert conducted a detailed statistical analysis of class-wide data to arrive at the calculated damages figures. Thus, while these risks are far from exhaustive, they demonstrate the Settlement is fair, adequate, and reasonable in view of them.

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

As noted, Individual Settlement Payments will be calculated based on the proportionate number of workweeks worked by each Class Member during the Class Period. *See* Agreement, ¶ 13. This method of distribution compensates Class Members based on the estimated extent of their injuries, as Class Members who worked more workweeks would have been subject to more of the alleged wage and hour violations than those who worked fewer workweeks. Thus, the formula for compensating Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

4. *The Absence of Objections and High Participation Rate Confirms that the Settlement is Fair, Adequate, and Reasonable*

Class members' response to a settlement is relevant in evaluating whether it merits final approval. *Dunk*, *supra*, 48 Cal.App.4th at 1801. The absence of objections and requests for exclusion supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1152-53 (2000) (finding 9 objections and 80 opt-outs from a class of 5,454 showed a "particularly impressive" favorable response from class members). Here, not a single Class Member has objected to the Settlement and only three (3) out of 24,997 Class Members have opted out, resulting in a 99.98% participation rate. Shim Decl., ¶¶ 11-12, 14. This extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

C. <u>The Requested Attorneys' Fees are Reasonable as a Percentage of the Common Fund Confirmed by a Lodestar "Cross-Check"</u>

Plaintiffs and the Settlement Class, as the prevailing parties in settlement, are entitled to recover their attorney's fees and costs for their wage claims. *See* Lab. Code §§ 226(e), 1194, 2802(c), and 2699(g). An attorneys' 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*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Cmmty. for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *see also* Cal. Code Civ. Proc. § 1021.5. Here, Plaintiffs submit that they are entitled to recover their attorneys' fees under the common fund theory, as confirmed by a lodestar "cross-check."

When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *Wershba*, 91 Cal.App.4th at 254 (recognizing the "percentage of recovery" method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* that "[t]he percentage of fund method survives in California class action cases." 1 Cal.5th 480, 506 (2016). Our Supreme Court held:

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

Id. at 503; *see also e.g.*, *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ("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."); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (percentage of fund method more accurately reflects the results achieved for the putative class and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.").

Here, Class Counsel's fee request of $1,866,666.66 (one-third of the Gross Settlement Amount), is fair and reasonable based on a percentage of the recovery. First, "regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix,* 162 Cal.App.4th 43, 66, n.11 (2008). This is also consistent with Class Counsel's experience in similar matters. Haines Decl., ¶¶ 7-8; Nordrehaug Decl., ¶¶ 3-5; Hawkins Decl., ¶¶ 32-38; Brouillette Decl., ¶¶ 3-5. Thus, the percentage sought by Class Counsel (the same percentage approved in *Laffitte*) is reasonable.

The California Supreme Court in *Laffitte* also held that trial courts have discretion to assess the reasonableness of fee awards with tools such as the "lodestar cross-check," whereby the trial court calculates counsel's lodestar and determines whether the "lodestar multiplier" needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte,* 1 Cal.5th at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id*., at 506 ("[w]e hold further that the trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.").

Under the lodestar method, the court multiplies the number of hours reasonably expended by each attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure by a "multiplier" to account for a range of factors, such as the contingent nature of the case and the degree of success achieved. *See Serrano v. Priest* 20 Cal.3d 25, 48-49 (1977); *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal. App. 4th 819, 834 (2001) ("There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation").

Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*, *supra*, 162 Cal. App. 4th at 49-50 (approving multiplier of about 2.5); *Coalition for L.A. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal. App. 3d 241, 251 (1977) (approving multiplier of about 12.8). In class actions such as this one, where the value of the benefit conferred to the class "can be monetized with a reasonable degree of certainty," the 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*, 175 Cal. App. 4th 545, 557 (2009).

Here, Class Counsel have a lodestar of approximately $489,969.75, which results in a modest multiplier of approximately 3.81 compared to the $1,866,666.66 fee request. Haines Decl., ¶¶ 14-16, Exhibit B; Nordrehaug Decl., ¶¶ 12-16, Exhibits 1 and 2; Hawkins Decl., ¶¶ 32-39; Brouillette Decl., ¶¶ 12, 29-31, Exhibit 1. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth in the attached declarations from Class Counsel. The billing rates used are reasonable in view of the evidence submitted herewith.

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk, and the absence of supporting precedents, are proper considerations in awarding attorney's fees). Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a 99.98% participation rate, and not a single Class Member objected to the Settlement, including Class Counsel's requested fees. *See* Shim Decl., ¶¶ 11-12, 14.

In addition, the average estimated payment in this case of $133.89 is in line with average payments in similar wage and hour class action settlements. *See, e.g.*, *Sorenson v. PetSmart, Inc.*, No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action settlement approved where average class member recovery was approximately $60); *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 (E.D. Cal. June 11, 2012) (finding that average payment to class members of less than $200 was a "good" result); *Williams v. Centerplate, Inc.*, No. 11-CV-2159 HKSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (granting final approval of class action settlement where average recovery for each class member was approximately $108 and describing result as "very favorable"). The fact that Class Counsel achieved these results in the face of serious defense challenges, and in an uncertain legal landscape, confirms the strength of the results achieved.

As noted, this case presented significant risk as to both class certification and prevailing on the merits. 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 expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiffs in this litigation, Class Counsel have borne all the costs of litigation for years without receiving any compensation to date. Hawkins Decl., ¶ 33; Haines Decl., ¶ 13, Exhibit A; Nordrehaug Decl., ¶ 19; and Brouillette Decl., ¶ 32. During this time, counsel has incurred approximately $36,394.01 in litigation costs, and devoted substantial time to this litigation.

Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research, conducting extensive formal and informal discovery, analyzing Class Members' timekeeping and payroll records and other data and documents with the assistance of a retained damages expert, creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing the Motion for Preliminary Approval, overseeing the Notice process and fielding questions from Class Members, preparing this Final Approval Motion and attending the Final Approval hearing, and otherwise litigating the case. Hawkins Decl., ¶ 33; Haines Decl., ¶ 13, Exhibit A; Nordrehaug Decl., ¶ 19; and Brouillette Decl., ¶ 31. Given the considerable potential for adverse outcomes in this case, including but not limited to, losing on class certification and/or merits issues, the contingent risk borne by counsel in this case was great. *Id.*

Class Counsel's previous experience in litigating wage and hour class actions also supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and hour class action litigation, with decades of combined experience litigating claims similar to those raised in this case. *See* Declarations of Class Counsel. Class Counsel have been certified as class counsel in dozens of other cases. *Id*. Their experience in similar matters was integral in evaluating the claims against Defendant and the reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law, as well as the procedural law of class action litigation. Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

Other factors also show that the fee amount requested in this case is reasonable under the circumstances. This case involved nuanced legal issues regarding both substantive and procedural law, including questions surrounding Defendant's obligation to "provide" meal periods and "authorize and permit" rest periods, and the propriety of statutory penalties, to name just a few. Thus, Class Counsel submit the requested fee award is fair, reasonable, and adequate and should be approved.

D. <u>The Requested Litigation Cost Amount Warrants Final Approval as Fair, Adequate, and Reasonable</u>

Class Counsel seek $36,394.01 in litigation costs. Hawkins Decl., ¶ 40; Haines Decl., ¶ 13, Exhibit A; Nordrehaug Decl., ¶ 19; and Brouillette Decl., ¶ 32. The cost request is fair, adequate, and reasonable, as the costs were reasonably incurred, and the costs Plaintiffs seek are routinely approved by courts. *See e.g.*, *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713 at *3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients"); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs reimbursable); *In re Immune Response Sec. Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation, consultant and expert fees; legal research; copies; postage; filing fees; messenger and overnight delivery costs reimbursable). In addition, not a single Class Member objected to the Settlement, including Class Counsel's request of $36,394.01 in litigation costs. *See* Shim Decl., ¶ 12. Because these costs were reasonably incurred, and no Class Member has objected to them, the Court should grant the request.

E. <u>The Court Should Approve the Requested Settlement Administration Costs</u>

Plaintiffs also request that this Court approve $109,990.00 in settlement administration costs to the Settlement Administrator, Apex. As detailed in the declaration of Stacey Shim submitted herewith, Apex performed duties that were integral in effectuating the Settlement and the Notice process. Among other things, Apex calculated each Class Member's Individual Class Payment, updated addresses contained in the class data supplied by Defendants, formatted Notices for mailing, mailed Notice Packets to all 25,000 Class Members, kept the parties informed of any objections or requests for exclusion, and otherwise administered the Settlement. *See* Shim Decl., ¶¶ 3-19. For these reasons, Apex's requested costs are fair, reasonable, and adequate, and should be finally approved.

F. <u>The Court Should Finally Approve Plaintiffs' Requested Class Representative Service Payments</u>

Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See*, *e.g.*, *Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving $50,000 service payment). Indeed, "[i]ncentive awards are fairly typical in class action cases." *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). The Court may award service awards "to compensate [Plaintiff] for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action. *Id.* at 958-59.

Here, Plaintiffs seek Service Payments of $10,000.00 each (totaling $40,000.00), and believe this request is reasonable given their efforts in this case and the risks they undertook on behalf of the Settlement Class. *See* Plaintiffs' Declarations. Hwakins Decl., ¶ 28. Plaintiffs expended substantial time and effort on behalf of the Settlement Class, including providing factual information and documents to counsel, attending meetings with counsel to discuss the claims and theories at issue in the litigation, and otherwise actively participating in the prosecution of their claims. *Id.*

Plaintiffs also undertook the risk of being liable for Defendant's costs if this case were lost, as well as the reputational risk of being named plaintiffs in a wage and hour class action against an employer. *See*, *e.g.*, *Deaver v. Compass Bank*, 2015 WL 8526982 at **14-15 (N.D. Cal. Dec. 11, 2015) (approving $7,500 incentive payment in $500,000 wage and hour settlement, finding the award "particularly appropriate in this wage and hour class action, where Plaintiff undertook a significant 'reputational risk' in bringing this action against his former employer").

Finally, after receiving notice of the proposed Class Representative Service Payments for Plaintiffs, no Class Member objected to the amount. *See* Shim Decl., ¶ 12. Given Plaintiffs' significant contributions to this case, the risks they undertook, and the lack of any objection from Class Members, Plaintiffs' requested Class Representative Service Payments are appropriate and justified as part of the Settlement and should be finally approved.

V. **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully submit that this Court should grant Plaintiffs' motion in its entirety and adopt the [Proposed] Final Approval Order and Judgment submitted herein.

Dated: July 23, 2025

Respectfully submitted,

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PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On August 4, 2025, I served on the interested parties in this action the following document(s) entitled:

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

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

DECLARATION OF KYLE NORDREHAUG IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

DECLARATION OF STACEY SHIM ON BEHALF OF APEX CLASS ACTION, LLC, IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

DECLARATION OF SOMALIA GOODWIN

DECLARATION OF PLAINTIFF JOHN A. MCGEHEE IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

DECLARATION OF JUAN CARLOS QUEVEDO IN SUPPORT OF APPROVAL OF CLASS ACTION SETTLEMENT

DECLARATION OF PAUL K. HAINES IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

DECLARATION OF BRANDON BROUILLETTE IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[XX] **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on August 4, 2025, at Irvine, California

Alma Chavarin
Alma Chavarin

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