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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
COUNTY OF SACRAMENTO

11 MICHELLE THOMAS, on behalf of the
12 State of California, and others similarly
situated and aggrieved,

13 Plaintiff,
14

15 v.

16 ELK GROVE MOTORS, INC., a California
17 Corporation; SELMA MOTORS, INC., a
California Corporation; SELMA AUTO
18 MALL, INC., a California Corporation;
SELMA AUTO MALL III, INC., a
19 California Corporation; and DOES 1-100,
inclusive,

20 Defendants.
21
22

Case No.: 23CV007153

Assigned for All Purposes to:
Hon. Jill H. Talley
Dept. 8A

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Date: June 12, 2026
Time: 9:00 a.m.
Dept.: 8A

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Michelle Thomas seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 655 individuals
4 who worked for defendants Elk Grove Motors, Inc., Selma Motors, Inc., Selma Auto Mall, Inc.
5 and Selma Auto Mall III, Inc. (together “Elk Grove Motors” or “Defendants”) as current and
6 former non-exempt employees that worked either directly or via a staffing agency for Defendants
7 at any location in California at any time during the Class Period of June 17, 2023 to June 30, 2025.
8 The proposed \$495,000 total settlement provides about \$248,646 in cash payments to the Class,
9 with an average award of around \$379, plus additional amounts payable under PAGA. The
10 remaining balance will cover a modest service award to Plaintiff, settlement administration costs,
11 civil penalties to the state, and reasonable attorney’s fees and costs. The parties and their counsel
12 finalized the settlement after extensive and difficult arms-length negotiations overseen by an
13 experienced and highly-regarded mediator. The Court conditionally certified the Class and
14 preliminarily approved the settlement on January 13, 2026. Since then, the Court-approved notice
15 form was mailed to the Class Members on April 3, 2026, and they have reacted very favorably to
16 the settlement. As of the filing of this motion, no Class Members have requested exclusion, and
17 there are no objections.

18 Class Counsel secured an excellent settlement with Elk Grove Motors after
19 extensive investigation, litigation, and settlement negotiation and administration, all
20 without any compensation for services rendered or costs expended. The class notice duly
21 informed the class members that Class Counsel would request attorney’s fees not to exceed
22 33.3% of the Gross Settlement Amount, or \$164,835, along with reimbursement of no more
23 than \$30,000 for actual costs incurred litigating this matter. As of the filing of this motion,
24 *not one Class Member objected* to the proposed fee award. Consistent with the Settlement
25 and notice, Plaintiff now respectfully requests the Court award Class Counsel's fees in the
26 amount of \$164,835 and costs in the amount of \$14,528.46, as described in the Declaration
27 of Nikki Trenner (“Trenner Decl.”) filed herewith. The requested attorney’s fees are well
28 within the range of reasonableness, especially considering the complex and risky nature of

1 this litigation, the contingent risk assumed, the nearly three year delay in payment and,
2 when subjected to a lodestar crosscheck, is equal to the base lodestar with a very modest
3 1.15 lodestar modifier.

4 Accordingly, on behalf of himself and the Settlement Class, Plaintiff respectfully
5 requests the Court grant this motion, give full and final approval to the settlement, grant Class
6 Counsel's request for attorney's fees and costs, and enter judgment accordingly.

7 **II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

8 Defendants own and operate multiple car dealerships. Plaintiff worked for Defendants at the
9 Elk Grove Kia dealership as a Service Writer from March to August of 2022. [Trenner Decl., ¶ 2.]

10 Plaintiff alleges a number of wage and hour violations by Defendants. First, she claims the
11 company pressured employees to work off the clock both before and after shifts, and also work
12 while purportedly on their breaks. She further alleges Defendants underpaid for overtime and sick
13 pay by failing to pay those wages based on the correct "regular rate of pay." For meal and rest breaks,
14 as noted Plaintiff contends breaks were non-compliant because employees frequently had to work
15 through some or all of their breaks, and also that Defendants did not fully relinquish all control over
16 the class members during the breaks. Finally, Plaintiff alleged she had to use her own cell phone on
17 company business without any reimbursement. [Trenner Decl., ¶ 3.]

18 Based on these allegations, Plaintiff initially filed a representative PAGA action against Defendants
19 on August 21, 2023. On November 14, 2023, Plaintiff submitted an arbitration demand to ADR Services,
20 Inc. asserting individual claims against Defendants for (1) failure to pay minimum wages and liquidated
21 damages; (2) failure to pay overtime wages; (3) failure to provide meal periods or compensation in lieu
22 thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to provide accurate
23 itemized wage statements; (6) failure to timely pay all wages due upon separation of employment; (7) failure
24 to reimburse business expenses; [Trenner Decl., ¶ 4.]

25 Elk Grove Motors has at all times denied Plaintiff's allegations and maintained its meal and
26 rest break and payroll policies and procedures comply with California law, that it paid the class
27 member wages due and at the correct rates of pay, and provided them with required meal and rest
28 breaks. Additionally, Elk Grove Motors strongly contends the case cannot be maintained as a class

1 action, arguing for example that to the extent class members missed meal and/or rest breaks, or that
2 such breaks were non-compliant, it was intermittent and infrequent and evidence of such missed
3 breaks would be anecdotal, and thus individualized issues would predominate. [Trenner Decl., ¶ 5.]

4 After Plaintiff filed her complaint, the Parties met and conferred on discovery, potential law
5 and motion, and other case management issues, and ultimately agreed to attempt early mediation.
6 The Parties then engaged in extensive informal discovery to facilitate an exchange of information
7 necessary to engage in a meaningful mediation. The Parties then engaged Steve Mehta, Esq., a
8 highly respected mediator with extensive wage and hour class action experience and, in May 2025,
9 participated in a full day mediation with Mr. Mehta. By the end of the day, the Parties were able to
10 reach agreement on all major issues. [Trenner Decl., ¶¶ 6-7.] The Court granted preliminary
11 approval to the settlement on January 13, 2026.

12 Class Notices were mailed to class members on April 3, 2026, with a 45-day window
13 (to May 18, 2026) for class members to opt out or object to the proposed settlement.
14 [Declaration of Stacey Shim (“Shim Decl.”), ¶ 7, 10.]

15 **III. THE PROPOSED SETTLEMENT TERMS**

16 Under the settlement, Elk Grove Motors will pay \$495,000 into a common fund, the Gross
17 Settlement Amount (“GSA”). Attorney’s fees of up to \$164,835 (33.3% of the GSA), litigation costs
18 of up to \$30,000 (only \$14,528.46 is requested), settlement administration costs of \$11,990, a
19 service award to Plaintiff of no more than \$10,000, and PAGA civil penalties of \$45,000, all will
20 be paid from the GSA. The balance of around \$248,646 will be allocated pro rata to the Class
21 Members based on their weeks worked during the Class Period. No portion of the GSA will revert
22 to Elk Grove Motors. [Trenner Decl., ¶ 10.]

23 **A. Certification of the Settlement Class**

24 The Court conditionally certified a settlement class defined to include all current and former
25 non-exempt employees that worked either directly or via a staffing agency for Defendants at any
26 location in California at any time during the Class Period of June 17, 2023 to June 30, 2025. The
27 Settlement Administrator ultimately mailed class notices to 655 individuals identified as
28

1 members of the Class. [Shim Decl., ¶ 7.] Nothing has changed to require reconsideration of
2 the Court's certification of the Settlement Class.

3 **B. The Benefit Conferred on the Settlement Class**

4 As noted, the settlement obligates Elk Grove Motors to pay \$495,000 to resolve the
5 Settlement Class's claims, inclusive of attorney's fees and costs. At least \$248,646 from the GSA
6 will be distributed to the Participating Class Members. This is a cash settlement that does not require
7 Participating Class Members to submit a claim form to receive their settlement share. Participating
8 Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty-
9 percent of each settlement share will be allocated to wages and the remaining eighty percent will be
10 allocated to expenses, penalties and interest, which allocation is consistent with Elk Grove Motors's
11 potential liability. Elk Grove Motors will pay any and all applicable employer-side payroll taxes
12 separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed
13 (because a class member does not cash their settlement check) will be forwarded to the State
14 Controller's Unclaimed Property Fund. [Trenner Decl., ¶ 12.]

15 Each Participating Class Member will receive a share of the Net Settlement Amount based
16 on his or her total weeks worked in California as a non-exempt employee during the Class Period..
17 Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically
18 used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal
19 and rest breaks, and potential statutory penalties under applicable law. These methods are intended
20 to ensure each Class Member receives a settlement award corresponding to the relative value of
21 their potential claims. The proposed allocation provides a reasonable way to compensate Class
22 Members based on the amount of time they worked for Elk Grove Motors in California and the
23 amount unpaid wages, the number of missed meal breaks and/or rest breaks, etc.

24 The average class award will be approximately \$379, and class awards will range from about
25 \$15 to just over \$1,100. The average PAGA award will be about \$17.18, and PAGA awards will
26 range from \$0.68 to \$49.94. [Shim Decl., ¶¶ 16, 18.]

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28 ////

1 **C. Settlement Administration**

2 Apex Class Action, LLC as the Court-approved Settlement Administrator, mailed the
3 Notice Packet to the Class members after making all reasonable effort to ascertain the best
4 mailing address, including running each address through the National Change of Address
5 database and "skip-tracing" any Notice Packets returned as undeliverable. [Shim Decl., ¶¶ 3-
6 9.] The Class Notice, previously approved by the Court, duly informed Class Members of the
7 settlement terms, including the estimated relief each Class Member will receive, the amounts
8 to be requested for attorney's fees and the class representative enhancement awards, and the
9 right to opt out of or object to the settlement. [Shim Decl., ¶ 7, Exh. A.] Apex mailed 655
10 Notice Packets on April 3, 2026. [Shim Decl., ¶ 7.] Ultimately, 11 Notice Packets were deemed
11 undeliverable, for a 99% success rate. [Shim Decl., ¶ 9.] The 45-day response window for
12 objecting to the settlement expired on May 19, 2026. [Shim Decl., ¶ 10.] As of the filing of this
13 motion, Apex has received zero requests for exclusion (for a 100% participation rate), and zero
14 objections to the settlement. One dispute was submitted regarding the information used to
15 calculate class member settlement shares, which dispute has been resolved. [Shim Decl., ¶¶ 12-
16 13.] Apex will submit a supplemental declaration prior to the hearing on this motion.

17 **D. Release of Claims**

18 All Participating Class Members will release Elk Grove Motors from all claims alleged in
19 the operative complaint, or that could have been brought based on the factual allegations in the
20 operative complaint during the Class Period. The release is limited to the claims that were actually
21 pleaded or could have been pleaded based on the alleged facts in the operative complaint. [Trenner
22 Decl., ¶ 17.]

23 **E. PAGA and Notice to the LWDA**

24 As noted, the Parties allocated \$45,000 to resolution of Plaintiff's alleged claims under
25 PAGA. Consistent with PAGA, \$33,750 of that amount will go to the LWDA for the State's share
26 of the civil penalties, while the remaining \$11,250 will be distributed pro rata to eligible Aggrieved
27 Employees. Prior to filing this motion, Plaintiff provided notice of the proposed settlement of the
28 PAGA claims and the approval hearing to the LWDA. [Trenner Decl., ¶ 20; Exh. 1.]

1 **IV. ARGUMENT**

2 **A. Standard of Review for a Class Action Settlement**

3 The law favors settlement, particularly in class actions where substantial resources can
4 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
5 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
6 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
7 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
8 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
9 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
10 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple Computer
11 (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud
12 or collusion, and to ensure fairness to absent class members. Dunk, 48 Cal.App.4th at 1800-01;
13 Newberg, at §§ 11.22, *et seq.* Review is accomplished through a two-step process intended to
14 determine whether, under the totality of circumstances, the settlement is fair, reasonable and
15 adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91 Cal.App.4th at 245.

16 On a motion for final approval, the trial court is charged with determining whether, in
17 light of the total circumstances of the action and the response of the class members to the
18 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
19 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
20 determination and may consider a number of relevant factors, including: the strength of
21 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
22 further litigation; the amount offered in settlement; the extent of discovery and stage of the
23 proceedings; the experience and opinion of counsel; and the reaction of class members to the
24 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,
25 courts generally apply a presumption of fairness to a proposed class action settlement when:
26 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
27 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
28

1 similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802;
2 Wershba, 91 Cal.App.4th at 245.

3 **B. The Proposed Settlement Merits Final Approval**

4 The proposed settlement of this action warrants final approval under the standards
5 summarized above. The settlement is fair, reasonable and adequate, and represents a favorable
6 resolution of highly disputed claims. Further, the settlement thus far has been overwhelmingly
7 approved by the class members, as there are no objections and no requests for exclusion.

8 **1. The Settlement Is the Product of Arm's-Length, Informed**
9 **Negotiations**

10 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
11 was reached following arm's-length negotiations presided over by Steve Mehta, Esq., a highly
12 respected and well-known mediator with extensive experience mediating wage and hour class
13 actions. [Trenner Decl., ¶ 7.] Moreover, Plaintiff and his counsel were well-informed about the
14 facts and the law, and counsel Zachary Crosner, Jamie Serb and Nikki Trenner, and Crosner Legal,
15 PC, have years of litigation experience, including litigating numerous wage and hour class actions.
16 Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation
17 or settling the matter. [Trenner Decl., ¶¶ 26-35, 38.] Defendant Elk Grove Motors likewise was
18 represented by highly-qualified and experienced defense counsel. Both sides advocated
19 vigorously for their clients, and nothing was "left on the table."

20 **2. The Class Reacted Favorably to the Settlement**

21 The settlement was well-received by the class. As of the filing of this motion, no
22 objections have been filed, and no Class Member has requested exclusion out of 655 settlement
23 class members. [Shim Decl., ¶¶ 11-12.] As many courts recognize, class member reaction to the
24 settlement is one of the most important factors to consider in determining if final approval should
25 be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also
26 In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-
27 settled that the reaction of the class to the settlement is perhaps the most significant factor to be
28 weighed in considering its adequacy") (internal quotation marks omitted).

1 **C. The Proposed Settlement Meets the Dunk Factors and is within the**
2 **Range of Reasonableness**

3 Prior to mediation, the parties engaged in informal discovery to facilitate settlement
4 discussions. As a result, Plaintiff has reviewed documents and information regarding Defendants'
5 payroll practices, a sampling of pay stubs and time records, meal and rest break policies, employee
6 handbooks, etc., and information from Defendants regarding class size and breakdown, work weeks,
7 rates of pay, and other information used to formulate a damages model. Plaintiff's counsel is
8 confident they obtained sufficient information to enable them to understand the law and facts of this
9 case and make an informed decision regarding the proposed settlement and whether it is in the best
10 interests of the class. [Trenner Decl., ¶¶ 6, 13.]

11 Using that data, we ran various calculations and estimated Elk Grove Motors's likely
12 maximum exposure on the class claims at approximately \$7,650,140, including about \$470,259 on
13 the off the clock/unpaid wage claims, about \$198,000 on the regular rate claim, approximately
14 \$1,993,200 on the meal period claims, about \$1,993,200 on the rest period claims, around \$165,000
15 on the expense reimbursement claims, approximately \$1,616,450 on the wage statement claims, and
16 \$1,214,040 on the waiting time penalty claims. [Trenner Decl., ¶ 14.] Plaintiff and counsel
17 substantially discounted the value of these claims, however, in light of Defendants' multi-layered
18 defenses on both class certification and on the merits, and the multiple and considerable risks posed
19 by proceeding with the litigation.

20 The unpaid wage claims focus primarily on Elk Grove Motors's alleged failure to pay Class
21 Members at least minimum wages and/ or overtime wages for all of their hours worked. First,
22 Plaintiff alleged a policy whereby management pressured Plaintiff and other class members to work
23 "off the clock" both before and after the scheduled start/stop times for their shifts, and also to work
24 during their meal periods. For instance, employees would have to spend several minutes booting up
25 their work computers and logging in to company systems in order to be ready to work exactly on
26 time, or would have to respond to customer calls and texts while purportedly clocked out for a lunch
27 break. Plaintiff also alleges Defendants failed to incorporate all employee compensation into the
28 regular rate of pay calculations when paying overtime and sick pay as required by Alvarado v. Dart
Container Corp. (2018) 4 Cal.5th 542 (2018), Here, Plaintiff alleges class members earned various

1 non-discretionary commissions and bonus compensation but were paid for overtime and sick pay at
2 1.5X their base hourly wage instead the correct "regular rate." [Trenner Decl., ¶ 28.]

3 In response, Elk Grove Motors argued its payroll policies are fully compliant, that it properly
4 tracked and paid for all hours worked at the appropriate hourly wage. Defendants also argued that,
5 if any class members failed to record and report time it was in violation of company policy and
6 would have occurred on a haphazard and individual basis. Accordingly Defendants argued the issue
7 would not be certifiable since it would require individualized inquiries whether any compensable
8 "off the clock" work occurred and why it was or was not documented and paid for. White v.
9 Starbucks Corp., 497 F.Supp.2d 1080, 1083 (N.D. Cal. 2007) (employer must have actual or
10 constructive knowledge of the off the clock work). [Trenner Decl., ¶ 29.]

11 On the meal and rest break claims, Plaintiff contends Elk Grove Motors's written policies
12 are not fully compliant, and as noted Plaintiff and other class members regularly during or through
13 their breaks at the behest of supervisors and/or to respond to customer inquiries. Plaintiff further
14 contends Defendants did not fully relinquish control over employees and restricted certain activities,
15 such as napping or using social media, while clocked in to include during breaks. Per Plaintiff, she
16 was required to perform at least some work during most meal breaks and rarely received rest breaks
17 at all under pressure to be more productive. [Trenner Decl., ¶ 30.]

18 In response, Elk Grove Motors argued its written policies are fully compliant, particularly
19 after settling the prior wage and hour class action, and that it provided employees with the
20 opportunity to receive all required breaks. Defendants further maintained that, in light of their
21 compliant policies and the fact that it provided employees with the opportunity to all required
22 breaks, whether a class member missed a meal period, received a late meal period, or missed a rest
23 break would have been aberrational and against company policy. Thus, per Elk Grove Motors, these
24 issues are not amenable to class or representative treatment since their resolution would require
25 individualized inquiries as to why a break was missed or non-compliant. [Trenner Decl., ¶ 31.]

26 On the expense reimbursement claim, Plaintiff alleges use of her personal cellular phone was
27 necessary and consequential to her employment duties for purposes of group messaging,
28 communicating with clients, and receiving work-related calls and texts. Defendants did not

1 reimburse employees for the cost associated with the use of the personal cellular phones for
2 Defendants' benefit. Cochran v. Schwan's Home Serv. (2014) 228 Cal.App.4th 1137, 1144. In
3 response, Elk Grove Motors argued it provided employees with all tools and equipment necessary
4 to perform their job duties and, to the extent employees used their own phones, it was purely for
5 personal convenience, was not necessary to their employment, and therefore was not reimbursable
6 under Labor Code § 2802. [Trenner Decl., ¶ 32.]

7 The claims under Labor Code sections 203 and 226 are derivative of the primary unpaid
8 wage claims, and accordingly are subject to the same risks and uncertainties plus additional risks
9 posed by the need to take into account the discretionary nature of such awards and the "good faith"
10 and other defenses available to Defendants. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th
11 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203 even though
12 class prevailed on underlying claim for failure to pay living wages). Thus, while these claims largely
13 are derivative of the unpaid wage claim, they also are subject to additional defenses. [Trenner Decl.,
14 ¶ 33.]

15 As far as potential PAGA liability, the allegedly aggrieved employees theoretically are
16 entitled to penalties totaling around \$8.25 million in civil penalties should Plaintiff prevail on all
17 claims and establish violations of the multiple Labor Code sections at issue for every single pay
18 period. [Trenner Decl., ¶ 34.] As with the class claims, Plaintiff discounted the potential PAGA
19 penalties based on Defendants' various defenses on the merits and also accounted for the Court's
20 wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code
21 § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded
22 penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco
23 Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA
24 penalties denied after trial).

25 Accordingly, the Parties allocated \$45,000 to PAGA penalties, and Plaintiff submits this
26 amount is reasonable under the circumstances and in line with comparable settlements in other wage
27 and hour class actions in California. *E.g.*, Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug.
28 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of \$5,000 PAGA penalty from

1 \$370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I
2 (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a \$7,500 PAGA payment
3 reasonable when measured against the overall settlement of \$345,000 and the possible weaknesses
4 in Plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of
5 the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. Jennings
6 v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving
7 settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement
8 agreement to the LWDA, and the LWDA has not objected to the settlement.

9 The settlement obviates the significant risk that this Court may find any kind of class or
10 representative resolution unachievable or deny certification of all or some of Plaintiff's claims.
11 Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued litigation
12 would be lengthy and expensive as the parties pursued merits discovery, a probable motion to
13 decertify, as well as trial and possible appeals, and would further and substantially delay any
14 recovery by the class with no assurance of recovering significantly more than the proposed
15 settlement. While Plaintiff is confident in the merits of these claims, legitimate controversies exist
16 regarding each one of them. Plaintiff also recognizes proving the amount of wages and penalties
17 due each Class Member would be an expensive, time-consuming, and uncertain proposition.
18 [Trenner Decl., ¶ 35.]

19 Plaintiff and counsel discounted the value of the class claims consistent with the risks
20 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
21 benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and
22 substantial risks – settlement on the proposed terms and without prolonged and costly litigation was
23 in the best interests of the class, and the overall \$495,000 recovery represents a significant
24 percentage of Defendants' potential exposure. Given these risks, a total recovery for the class of
25 \$495,000, which will result in average award of over \$355 per class member, is a significant result
26 well within the range of reasonableness considering all potential outcomes, and it will provide direct
27 monetary awards to all Class Members without further delay. [Trenner Decl., ¶ 36.]
28

1 Importantly, the mere fact that a settlement does not provide the same recovery as might be
2 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
3 Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the settlement
4 process...even if the relief afforded by the proposed settlement is substantially narrower than it
5 would be if the suits were to be successfully litigated, this is no bar to a class settlement because the
6 public interest may indeed be served by a voluntary settlement in which each side gives ground in
7 the interest of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819
8 (“[T]he question whether a settlement is fundamentally fair . . . is different from the question
9 whether the settlement is perfect in the estimation of the reviewing court”); 7-Eleven Owners for
10 Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that a proposed
11 settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean
12 that the proposed settlement is grossly inadequate and should be disapproved”); White v. Experian
13 Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention
14 settlement was not fair and reasonable even though it represented 99% discount off the maximum
15 value of the claims). Importantly as well, the proposed settlement is non-reversionary and will
16 provide timely benefits to the Class Members without a claims process. White, 803 F.Supp.2d at
17 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges
18 (3d ed. 2010) at 20, available at [http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
19 (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff
20 and his counsel submit the settlement is within the “range of reasonableness,” and is fair and
21 adequate for the Class.

22 **V. PLAINTIFF’S ENHANCEMENT AWARD**

23 Under the terms of the settlement, Plaintiff seeks a modest incentive award of \$10,000 for
24 her service in bringing these claims on behalf of the Class. The request is reasonable given the risks
25 she undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these
26 claims, Plaintiff helped make this settlement possible for the absent Class Members, while
27 shouldering the risk of being liable for Defendants’ litigation costs. Plaintiff also exposed herself to
28 unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google

1 search) for the benefit of other employees, placing herself at risk of discrimination by future
2 prospective employers. As set forth in more detail in her declaration submitted with the preliminary
3 approval motion, among taking many other actions assisting in the successful litigation of this case,
4 Plaintiff provided substantial factual information and documents to counsel, attended numerous
5 meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant
6 developments. [Declaration of Michelle Thomas, ¶¶ 2-9 (filed December 9, 2025); Trenner Decl., ¶
7 22.] Accordingly, the requested enhancement payments to Plaintiff is appropriate and justified as
8 part of the settlement.

9 **VI. SETTLEMENT ADMINISTRATION COSTS**

10 The settlement provides for a payment to Apex for its services as the Settlement
11 Administrator. As set forth in the Declaration of Stacey Shim, Apex has performed and will
12 continue to perform its required duties through final distribution of the settlement funds and incurred
13 \$11,990 in fees and expenses. [Shim Decl., ¶ 19; Exh. B.] Accordingly, Plaintiff respectfully
14 requests the Court approve payment of \$11,990 to Apex from the GSA. [Trenner Decl., ¶ 23.]

15 **VII. ATTORNEY'S FEES AND COSTS**

16 **A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be**
17 **Approved**

18 This Court has discretion over the amount of attorneys' fees awarded and court approval
19 is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota Motor Sales,
20 U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82 Cal.App.4th
21 19. In defining a reasonable fee, the Court should attempt to mimic the marketplace for cases
22 involving significant contingent risk, such as this one. Deposit Guaranty Nat'l Bank, Jackson,
23 Miss. v. Roper (1980) 445 U.S. 326, 338, reh'g. den. 446 U.S. 947; Lealao, 82 Cal.App.4th at
24 49-50 (court should attempt "to award the fee that informed private bargaining, if it were truly
25 possible, might have reached" in determining a reasonable fee, and a fee award should
26 approximate a "range of fees freely negotiated in comparable litigation"). Here, Class
27 Counsel's request for attorney's fees and costs is reasonable and justified by the work
28 performed, the benefits obtained, and the contingent risk assumed.

1 As addressed in detail above, at the time the parties reached the tentative settlement
2 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
3 some or all the claims would not be certified for class treatment, as Defendant had strong
4 arguments that its compensation policies were legal and properly compensated the class
5 members, that the class might not be sufficiently numerous, and that many putative class
6 members previously waived the claims at issue. Even if Plaintiff certified some or all of the
7 claims and ultimately prevailed on the merits, it undoubtedly would have taken several years
8 to realize any recovery while they pursued class certification, trial, and an almost certain appeal.
9 [Trenner Decl., ¶¶ 14-18.]

10 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to
11 obtain, and the settlement provides substantial cash payments to Class Members, with an
12 average award of about \$379, and with a maximum award of over \$1,100. Importantly as well,
13 the Class Members have been overwhelmingly supportive of the Settlement – as of the filing
14 of this motion, there are no objections to the settlement and no opt outs. [Shim Decl., ¶¶ 11-
15 12.]

16 **B. The Requested Fee Award Is Reasonable and Appropriate**

17 The United States Supreme Court has ruled the parties to a class action properly may
18 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
19 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
20 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
21 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
22 should not result in a second major litigation. Ideally, of course, litigants will settle the amount
23 of a fee." The United States Supreme Court has reemphasized this policy and further stressed
24 trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson (1984)
25 465 U.S. 886, 902 n.19.

26 As part of the Settlement, Elk Grove Motors agreed not to object to an award of no more
27 than 1/3 of the GSA for attorney's fees, or \$164,835, and up to \$30,000 in reimbursement for
28 litigation costs and expenses. Such a fee is commensurate with what the market would provide

1 for similar services and the Court therefore can most certainly enforce the agreement. As
2 California's Court of Appeal has instructed:

3 Given the unique reliance of our legal system on private litigants to enforce substantive
4 provisions of law through class and derivative actions, attorneys providing the essential
5 enforcement services must be provided incentives roughly comparable to those negotiated
6 in the private bargaining that takes place in the legal marketplace, as it will otherwise be
7 economic for defendants to increase injurious behavior.

8 Lealao, 82 Cal.App.4th at 47.

9 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
10 arms-length bargaining regarding relief to the Class was completed. [Trenner Decl., ¶ 24.]
11 The requested fee and cost award was a product of these arms-length negotiations and fairly
12 reflects the marketplace value of the services rendered by Class Counsel in this case. As a
13 result, the fee agreed to by the parties should be approved.

14 **C. Class Counsel's Fees are Justified When Calculated as a Percentage of the
15 Common Fund**

16 In approving fee applications, courts typically apply either a percentage-of-recovery
17 method or the lodestar method. Laffitte v. Robert Half Int'l., Inc. (2016) 1 Cal.5th 480, 489;
18 Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other
19 grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260. The California
20 Supreme Court recently recognized the advantages and equities of calculating attorney's fees
21 using the percentage-of-the-common-fund method in another wage-and-hour case:

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

28 Laffitte, 1 Cal.5th at 503 (citations omitted).

 Indeed, both California and federal courts have long recognized an appropriate method
for determining the award of attorney's fees is based on a percentage of the total value of
benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,

34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.
(9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
recovered operates to "spread litigation costs proportionately among all the beneficiaries so that
the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

In determining a reasonable common fund fee award, courts should also consider the
fact that fees serve as an economic incentive for lawyers to bring class action litigation to
achieve increased access to the judicial system for meritorious claims and to enhance deterrents
to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without prosecution on a
contingent basis and use of the class action mechanism, the courthouse door would effectively
be closed to most class members due to the relatively small size of their individual claims in
relation to the enormous time and cost associated with class action litigation.

Here, Class Counsel seek a fee award for their successful prosecution and resolution of
this action of no more than one-third of the total amount recovered by the Class via the lawsuit,
or \$164,835.00. The percentage requested is justified for the reasons set forth further below,
and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review
of class action settlements shows that courts have historically awarded fees in the range of 20
to 50 percent, depending upon the circumstances of the case. In re Warner Communications
Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in
common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d
ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award
from a common fund in order to assure that the fees do not consume a disproportionate part of
the recovery obtained for the class, although somewhat larger percentages are not
unprecedented.").

D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request

To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
an objective measure of the work performed into the calculation of a reasonable attorney fee."

1 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 178.6 hours of time on this matter, resulting
2 in a modest and very reasonable lodestar of \$142,780.

3 As is fully detailed in the Trenner Declaration, Class Counsel's efforts included:
4 (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including
5 legal research, obtaining Plaintiff's employment records, research into similar claims and claims
6 against other employers in the same industry, and attempts to locate and contact other Elk Grove
7 Motors employees; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related
8 documents; (4) case management, including communications with defense counsel, meeting and
9 conferring/preparing case management statements, etc.; (5) addressing arbitration issues and
10 preparing submitting a demand for arbitration; (6) lengthy discussions with defense counsel
11 regarding settlement/mediation and informal discovery needed for meaningful settlement
12 discussions; (7) engaging in substantial informal discovery, including propounding informal
13 discovery "requests" and reviewing documents and other information produced; (8) drafting a
14 mediation brief and accompanying damages model after review and analysis of defendant's informal
15 discovery production; (9) attending an all-day mediation; (10) negotiating and drafting the
16 settlement agreement and related documents; (11) drafting the motion for preliminary approval and
17 attending the hearing thereon; (12) administration of the settlement, including addressing
18 application of the escalator clause, communications with the Settlement Administrator and
19 settlement class members; (13) drafting the motion for final approval and motion for attorney's fees,
20 and attending the final approval hearing; and (14) extensive communications with the Plaintiff
21 regarding case status, case investigation and document review, mediation, and settlement terms.
22 [Trenner Decl., ¶ 25, Exh. 2.] Additionally, Class Counsel will incur additional time to attend the
23 final approval hearing and following final approval to, inter alia, respond to class member inquiries,
24 work with the Settlement Administrator on the distribution of settlement funds, and on the
25 compliance hearing.

26 In pursuing this matter, Class Counsel incurred total attorney's fees of \$142,780, the
27 lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a
28 successful conclusion (178.6 attorney hours), and the requested attorney hourly rates are reasonable

1 and comport with hourly rates charged by other attorneys with similar experience in this practice
2 area in California. [Trenner Decl., ¶¶ 26-43.] On a lodestar basis, the fee request of \$164,835 is
3 equal to the base lodestar with a modest 1.15 upward enhancement, which is entirely in line
4 with California precedent. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming
5 attorneys' fee award including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255
6 ("Multipliers can range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988)
7 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).) Class Counsel submits that the
8 requested 1.15 multiplier effectively operates to show that the percentage fee request is
9 reasonable considering the challenges presented in this contingency fee matter and
10 appropriately compensates Class Counsel for the contingent risk assumed and delay in payment
11 during the 2.5+ years counsel have been representing Plaintiff. Thus, the multiplier results in a
12 fee constituting a fair return on the contingency.

13 **E. The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill**
14 **Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar Cases**

15 What has now emerged in most fee award decisions is the recognition that fee
16 determinations in both common fund and statutory fee situations are incapable of mathematical
17 precision because of the intangible factors that must be resolved in the court's discretion based
18 on the circumstances of each particular case. Conte, § 207, p. 44. In determining an appropriate
19 fee in a common fund case, a Court must decide, based on the unique posture of each case,
20 what percentage of the common fund would most reasonably compensate Class Counsel given
21 the nature of the litigation and the performance of counsel. Paul, Johnson, Alston & Hunt v.
22 Grauly (9th Cir. 1989 886 F.2d 268, 272) (the benchmark percentage fee may be adjusted to
23 account for the circumstances involved in a case).

24 Courts apply a five-part test in calculating a reasonable percentage fee in common fund
25 cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of
26 work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and
27 (5) awards made in similar cases. Laffitte, 1 Cal.5th at 489.

28 **1. The Results Achieved.**

1 Class Counsel obtained an excellent result in this case for the Class Members. The
2 Settlement provides real monetary benefits to the Class Members, and the Settlement is
3 particularly advantageous to the Class Member because the proceeds will be distributed shortly
4 as opposed to waiting additional years for a similar, or possibly, less favorable result.
5 Considering many individual claims would be very modest and would not be cost-effective to
6 pursue successfully, the Settlement provided them with fair compensation for their claims.
7 Moreover, the absence of any objection to either the Settlement or the attorney's fee request
8 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated by
9 the fact that only one class member opted out. Additionally, the settlement amounts to a
10 substantial percentage of the maximum value of the amount the Class might have obtained if it
11 had tried the case and recovered on all theories seeking recovery of wages and penalties. "It is
12 well-settled law that a cash settlement amounting to only a fraction of the potential recovery
13 does not per se render the settlement inadequate or unfair." In re Omnivision Techs., Inc., 559
14 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

15 **2. Class Counsel Bore Considerable Risk.**

16 At the time of filing the complaint, Class Counsel recognized that they would have to
17 expend a substantial amount of time and advance significant costs to prosecute a statewide
18 class action suit with no guarantee of compensation or reimbursement, in the hope of
19 prevailing against a sophisticated company represented by first-rate attorneys. Despite their
20 belief in the validity of Plaintiff's claims, they also knew they faced substantial risks of class
21 certification and the ability to prove class-wide and individual damages. In light of the highly
22 uncertain nature of this suit, Class Counsel also bore the risk that Defendant would dig in and
23 attempt to bury their small firm in work. Given the small size of Class Counsel's firm, not
24 receiving any compensation for several years while simultaneously advancing litigation costs
25 posed considerable risk and difficulty. [Trenner Decl., ¶¶ 44-45.]

26 **3. The Skill Required and the Quality of Work.**

27 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
28 experience. The issues presented in this case required more than just a general appreciation of

1 wage and hour law and class action procedure. This Settlement was possible only because
2 counsel persuaded Elk Grove Motors that Plaintiff and the putative class had a realistic
3 chance of prevailing on their claims despite Elk Grove Motors's contrary arguments, and
4 that the case would be pursued through class certification and trial if necessary. In
5 successfully navigating these hurdles, Class Counsel displayed appropriate skill while
6 pursuing a risky and difficult case.

7 4. **The Contingent Nature of the Fee and Risk Assumed**

8 There is a substantial difference between the risk assumed by attorneys being paid
9 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
10 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249,
11 1256. The attorney working on a contingent basis can only log hours while working without
12 pay towards a result that will hopefully entitle him to a market fee considering the risk and
13 other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee attorney receives
14 nothing. Id. In this case, Class Counsel subjected themselves to this risk in this all or
15 nothing contingent fee case wherein the necessity and financial burden of private
16 enforcement makes the requested award appropriate.

17 Counsel retained on a contingency fee basis, whether in private matters or in class
18 action litigation, is entitled to a premium beyond their standard, hourly, non-contingent fee
19 schedule to compensate for both the contingent risk assumed and the delay in payment.
20 The simple fact is that despite the most vigorous and competent of efforts, success is never
21 guaranteed. McKittrick v. Gardner (4th Cir. 1967) 378 F.2d 872, 875. Indeed, if counsel is
22 not adequately compensated for the risks inherent in difficult class actions, competent
23 attorneys will be discouraged from prosecuting similar cases. Ketchum v. Moses (2001) 24
24 Cal.4th 1122, 1132-33; Cazares v. Saenz (1989) 208 Cal.App.3d 279, 287.

25 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate the
26 investment of unnecessary time in a case, and the adverse resolution of any one of several
27 difficult issues present in this matter could have doomed the entire effort. As discussed, the
28 attorney's fees in this case were not only contingent but fairly risky, and there was always a

1 palpable chance Plaintiff's counsel would receive nothing for any number of reasons. [Trenner
2 Decl., ¶¶ 44-45.] Accordingly, the contingent nature of the fee and the financial burdens on
3 Class Counsel and Plaintiff also support the fee requested.

4 **5. Awards in Other Cases**

5 As discussed, the attorney's fees requested by Class Counsel are within the range of fees
6 awarded in comparable cases, and review of class action settlements over the past 10 years
7 shows that the courts have historically awarded fees in the range of 20 to 50 percent, depending
8 upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985)
9 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from
10 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually
11 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to
12 assure that the fees do not consume a disproportionate part of the recovery obtained for the
13 class, although somewhat larger percentages are not unprecedented."). Class Counsel's
14 requested fees equal to 1/3 of the gross amount recovered on behalf of the class and are well
15 within the range of reasonableness under either the percentage of the recovery or the lodestar
16 method in light of the contingent risk assumed, the delay in payment, the result achieved, and
17 the overall quality of the representation.

18 **F. Class Counsel's Costs and Expenses are Reasonable**

19 Plaintiff's counsel also requests reimbursement of actual out-of-pocket expenses incurred to
20 prosecute this action. These expenses were incidental and necessary to the effective representation
21 of the employees, and Plaintiffs' counsel is permitted to recover litigation costs and expenses under
22 the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35 (common fund
23 doctrine permits recovery of fees and costs from the fund); Rider v. County of San Diego (1992) 11
24 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund "[o]f necessity, and for
25 precisely the same reasons discussed above with respect to the recovery of attorneys' fees by ...
26 [Plaintiffs'] attorneys"). Plaintiffs' counsel also is entitled to recover "those out-of-pocket expenses
27 that would normally be charged to a fee-paying client." Harris v. Marhoefer (9th Cir. 1994) 24 F.3d
28 16, 19.

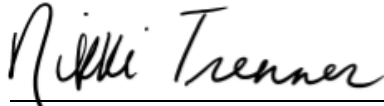
1 Per the Trenner Declaration, Class Counsel incurred a total of \$14,528.46 in expenses
2 in connection with this matter. These expenses include amounts paid for court filing fees,
3 service of process, postage, and mediation fees, all of which are costs normally billed to
4 and paid by the client. These costs were reasonably incurred in the prosecution of this
5 matter, and should be reimbursed up in full. Plaintiff respectfully requests that the Court
6 authorize reimbursement of counsel's costs in the amount of \$14,528.46. [Trenner Decl., ¶¶
7 46-47.]

8 **VIII. CONCLUSION**

9 For all the foregoing reasons, Plaintiff Gerardo Gutierrez respectfully requests that the Court
10 grant this motion and grant final approval of the proposed class action settlement and approve the
11 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of the
12 Settlement Administrator's fees and expenses, approve the requested class representative
13 enhancement payment, approve the award of attorney's fees and costs as requested, and enter
14 judgment in this action. Finally, Plaintiff request the Court set a final compliance hearing for June
15 10, 2027, or a later date convenient for the Court.

16
17 Dated: May 18, 2026

CROSNER LEGAL, PC

18
19 By: 
20 Jamie Serb, Esq.
21 Zachary M. Crosner, Esq.
22 Nikki Trenner, Esq.
23 Attorneys for Plaintiff Michelle Thomas
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