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6 on behalf of herself and all others similarly situated
and on behalf of the general public
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SACRAMENTO**

10 MARICHU JEFFRIES, on behalf of
11 herself and all others similarly situated, and
12 on behalf of the general public,

13 Plaintiffs,

14 v.

15 THE MEADOWS AT COUNTRY PLACE,
16 LLC; and DOES 1-100,

17 Defendants.
18

Case No. 23CV003530

**PLAINTIFF MARICHU JEFFRIES'
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT**

Date: January 17, 2025

Time: 9:00 a.m.

Dept.: 22

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1 **I. INTRODUCTION**

2 This motion seeks approval of a non-reversionary \$180,000 proposed wage and hour class
3 action settlement reached between Plaintiff Marichu Jeffries (hereinafter “Plaintiff”) and
4 Defendant The Meadows at Country Place, LLC (hereinafter “Defendant”) (hereinafter Plaintiff
5 and Defendant are collectively referred to as the “Parties”).¹ The settlement is on behalf of Plaintiff
6 and a Class comprised of current and former non-exempt employees who worked for Defendant
7 in California at any time during the Class Period.² The Class Period is June 21, 2019, through April
8 20, 2024. This motion also seeks an order entering judgment.

9 On September 27, 2024, the Settlement Administrator mailed Class Notices to all 71 Class
10 Members.³ These Class Members had until November 26, 2024, to request to be excluded from
11 the settlement, to object to the settlement, or submit a dispute regarding the number of workweeks
12 that Class Members were credited to have worked. As of the date of this filing, the Settlement
13 Administrator has not received any disputes regarding the number of workweeks that Class
14 Members were credited to have worked, nor has the Settlement Administrator received any
15 objections to the settlement or requests for exclusion from the settlement.⁴

16 To date, this matter has required 153 hours of attorney time from Class Counsel. This
17 litigation involved investigations into the claims asserted, discovery, the production and review of
18 documents from Defendant, a full day of mediation, and evaluation of continuing litigation.

19 As will be demonstrated herein, the attorneys’ fee request of \$60,000 (“Attorney Fee
20 Award”), which represents one-third of the Gross Settlement Amount (“GSA”), is fully supported
21 using the percentage fee method. The Attorney Fee Award is also supported under the lodestar
22 cross-check method. Plaintiff further moves for reimbursement of litigation costs and expenses in
23 the amount of \$26,444.64 (“Cost Award”), originally estimated not to exceed \$30,000, for costs
24

25 ¹ The Joint Stipulation and Settlement Agreement (hereinafter “Agreement”) is attached to the
26 Declaration of David Mara, Esq. (“Mara Dec.”) as **Exhibit 5**. “**Exhibit 5**” herein refers to the
Agreement.

27 ² **Exhibit 5** at Paragraph I(5).

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

⁴ Nava Dec. ¶¶ 11-13.

1 incurred in litigating this matter. Plaintiff also moves for final approval of the payment in the
2 amount of \$2,500 to Plaintiff (this payment is referred to as the “Class Representative
3 Enhancement Payment”) to compensate her for agreeing to a general release of her claims against
4 Defendant and her vital role in representing the Class Members and spearheading the case to seek
5 actual and substantial monetary relief for the Class. Additionally, Plaintiff moves for final approval
6 of Administration Costs in the amount of \$5,000, originally estimated not to exceed \$7,500, to the
7 Settlement Administrator, Apex Class Action Administration (hereinafter “Apex”) for the costs
8 and fees of administering settlement (“Administration Costs”).

9 The requested Attorney Fee Award, Cost Award, Class Representative Enhancement
10 Payment, and Administration Costs were fully disclosed to the Class Members when the Class
11 Notice was mailed to them. Most importantly, to date, the settlement and all of its terms have
12 received support from Class Members as not a single Class Member has objected to the settlement
13 or requested to be excluded from it. **With a currently estimated average and high payout to**
14 **Settlement Class Members of \$1,183.88 and \$3,387.07, respectively, the settlement is fair,**
15 **adequate, and reasonable.** The Court is, therefore, respectfully requested to consider the Class
16 Members’ endorsement of the settlement and grant final approval of the settlement, and approve
17 of the Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, and
18 Administration Costs in the amounts as preliminarily approved of by this Court and disclosed to
19 the Class Members, and as requested herein.

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

II. BACKGROUND, INVESTIGATION, AND LITIGATION HISTORY

a. Litigation History

Defendant operates a retirement and assisted living facility. In order to carry out its business, Defendant employs hourly non-exempt employees, like Plaintiff. Mara Dec. ¶ 9.

On June 12, 2023, Plaintiff sent notice to the LWDA of her intent to pursue various wage and hour claims against Defendant on behalf of similarly situated aggrieved employees. Shortly thereafter, Plaintiff filed a putative class action complaint on June 21, 2023, against Defendant in the Sacramento County Superior Court, Case No. 23CV003530, alleging causes of action for: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (6) Failure to Pay All Wages Due at the Time of Termination of Employment; and (7) Violation of Unfair Competition Law. On or around October 10, 2023, Plaintiff filed a First Amended Complaint, alleging an additional cause of action for identical violations of the California Labor Code and seeking civil penalties under the Private Attorneys General Act (“PAGA”). Mara Dec. ¶ 10.

Defendant denies the allegations of the action in its entirety, deny any liability or wrongdoing of any kind associated with the claims alleged in this action, and further deny that, for any purpose other than settling this action, this matter is appropriate for class treatment. Defendant further contends that they have complied with all applicable California laws, the California Labor Code, the applicable California Wage Order(s), and the Unfair Competition Law. Defendant finally contends that, if this matter were to be litigated further, they would have strong defenses to oppose class certification and succeed on the merits of Plaintiff’s causes of action. Mara Dec. ¶ 11.

b. Discovery and Investigation

Through discovery, Plaintiff sought numerous documents and substantial amounts of data that were needed to evaluate the case. These documents included requests for time and wage records for the Class, employee handbooks, policies, and practices in place during the class period, as well as data surrounding the number of current and former employees. Mara Dec. ¶ 12.

1 This discovery, in conjunction with the Parties' meet and confer efforts, resulted in the
2 production of over one thousand, documents, including Defendant's employee handbooks,
3 policies, and practices, and a sampling of wage and time records for Plaintiff and Class Members.
4 Using the time and wage records for the Class provided and the data surrounding the number of
5 current and former employees, Plaintiff and her expert were able to establish a potential exposure
6 model in preparation for mediation. Mara Dec. ¶ 13.

7 **c. Settlement Negotiations**

8 The Parties agreed to attend mediation with mediator Steve Serratore on February 20, 2024.
9 After a full day of mediation, a mediator's proposal was issued, which the Parties ultimately
10 accepted. The Parties then met and conferred over all the terms of the settlement and finalized their
11 settlement in the Parties' Agreement. The Parties seek final approval of the Agreement in the
12 instant motion. *See* Mara Dec. ¶ 14; **Exhibit 5**.

13 **III. THE PROPOSED SETTLEMENT**

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

15 The Parties have agreed, subject to and contingent upon the Court's approval, that this
16 action be settled and compromised for the non-reversionary total sum of \$180,000 ("Gross
17 Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of
18 \$60,000 (one-third of the GSA) to compensate Class Counsel for work already performed and all
19 work remaining to be performed in documenting the settlement, administering the settlement, and
20 securing Court approval; (b) litigation costs of \$26,444.64 (originally estimated not to exceed
21 \$30,000); (c) a Class Representative Enhancement Payment to the named class representative,
22 Gabriela Guevara, in a sum not to exceed \$2,500 in consideration for prosecuting this class action,
23 serving as Class Representative, work performed, and risks undertaken for the payment of
24 attorneys' fees and costs in the event she had been unsuccessful in the matter; (d) settlement
25 administration fees and expenses to Apex in the amount of \$5,000 (estimated not to exceed
26 approximately \$7,500); and (e) \$2,000 allocated to Plaintiff's claims under the PAGA. Of this
27 payment, 75%, or \$1,500 will be provided to the LWDA, and 25%, or \$500, will be available for
28

1 distribution to Aggrieved Employees.⁵

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

3 After all Court-approved deductions from the GSA, it is estimated that \$84,055.36 (“Net
4 Settlement Amount” or “NSA”), less employee taxes on the “wage portion” of the settlement
5 payment, will be distributed to Participating Class Members.⁶ Subject to the terms and conditions
6 of the settlement, each Participating Class Member will receive a portion of the Net Class
7 Settlement Amount called their “Individual Class Settlement Share.” An Individual Class
8 Settlement Share will be calculated by (a) dividing the Net Settlement Amount by the total number
9 of Workweeks worked by all Participating Class Members during the Class Period and (b)
10 multiplying the result by each Participating Class Member’s Workweeks. **Exhibit 5** at Paragraph
11 III(58)(A)(i). Therefore, the value of each Class Member’s Individual Class Settlement Share ties
12 directly to the amount of weeks that he or she worked.

13 The Individual Class Settlement Share will be divided into a “wage portion” to compensate
14 Participating Class Members for alleged unpaid wages, an “interest portion” to compensate
15 Participating Class Members for alleged interest, and a “penalty portion” to compensate
16 Participating Class Members for alleged penalties. The wage portion will make up 10% of each
17 Participating Class Members’ Individual Class Settlement Share, with the interest portion and the
18 penalty portion each making up 45% of each Participating Class Members’ Individual Class
19 Settlement Share. **Exhibit 5** at Paragraph III(58)(B).

20 In addition, each Aggrieved Employee will receive a will receive a proportionate share of
21 the PAGA Payment that is allocated for distribution to Aggrieved Employees (i.e., 25% of the
22 PAGA Payment). The Administrator will calculate each Individual PAGA Payment by (a) dividing
23 the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$5,000) by the total
24

25 ⁵Aggrieved Employees are all current or former hourly non-exempt employees who worked for
26 Defendant in California during the PAGA Period. **Exhibit 5** at Paragraph I(3). The PAGA Period
is June 12, 2022, through April 20, 2024. **Exhibit 5** at Paragraph I(32).

27 ⁶ Participating Class Members are “[a]ll Class Members who do not submit a valid and timely
28 request to exclude themselves from this Settlement.” **Exhibit 5** at Paragraph I(34). If the Class
Member is also an Aggrieved Employee, they will still be bound by the PAGA Settlement and will
receive an Individual PAGA Settlement Payment as approved by the Court. **Exhibit 5** at Paragraph
III(62)(E)(i).

1 number of weeks worked by all Aggrieved Employees during the PAGA Period and (b)
2 multiplying the result by each Aggrieved Employee's weeks worked. **Exhibit 5** at Paragraph
3 III(59)(A)(i). Therefore, the value of each Aggrieved Employees' PAGA Settlement Share ties
4 directly to the amount of weeks that the Aggrieved Employees worked during the PAGA Period.
5 Each Aggrieved Employee's Individual PAGA Settlement Share will be apportioned as 100%
6 penalties. **Exhibit 5** at Paragraph III(59)(B).

7 **Under no circumstances will any portion of the \$180,000 settlement revert to**
8 **Defendant and 100% of the NSA will be paid out to Participating Class Members. In**
9 **addition, the employer's share of taxes will be paid in addition to and outside of the GSA.**

10 **c. Release of Claims**

11 The Class Representative will be bound by a general release. *See* **Exhibit 5** at Paragraph
12 III(65). In exchange for an Individual Class Settlement Share, all Participating Class Members will
13 agree to the following release:

14 All claims that were asserted in the Action, or that arise from or could have been
15 asserted based on any of the facts, circumstances, transactions, events, occurrences,
16 acts, disclosures, statements, omissions or failures to act alleged in Plaintiff's
17 Complaint, regardless of whether such claims arise under federal, state and/or local
18 law, statute, ordinance, regulation, common law, or other source of law, during the
19 Class Period. This release specifically includes, but are not limited to Labor Code
20 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, and the
21 related IWC Wage Orders and Business & Professions Code §§ 17200, et seq., and
22 include claims based on alleged violations of these Labor Code and Wage Order
23 provisions) and all other claims, such as those under the California Labor Code,
24 Wage Orders, regulations, and/or other provisions of law, that could have been
25 pleaded based on the facts asserted in the Action, including: (1) failure to pay all
26 straight time wages; (2) failure to pay overtime; (3) failure to provide meal periods;
27 (4) failure to provide rest breaks; (5) failure to provide accurate itemized wage
28 statements; (6) failure to timely pay employees upon separation or discharge; (7)
all related violations of California's unfair competition law; and (8) interest, fees,
and costs ("Released Class Claims"). The enumeration of these specific statutes
shall neither enlarge or narrow the scope of res judicata based on the claims that
were asserted in the Action or could have been asserted in the Action based on the
facts and circumstances alleged in any Complaint on file in the Action. The release
as to these claims will be deemed effective when Defendant funds the settlement.

27 **Exhibit 5** at Paragraph I(37).

28 In addition, all Aggrieved Employees will agree to the following release in exchange for

an Individual PAGA Settlement Share:

Plaintiff, or such other designee who has properly exhausted administrative requirements, acting in the capacity of a representative of the State of California, and on behalf of the group of Aggrieved Employees, shall agree to release any and all claims for civil penalties that could have been asserted by the Labor Commissioner against Defendant under the PAGA during the PAGA Period, Cal. Lab. Code § 2698, *et seq.* to the extent such claims are predicated on claims made or that could have been made based on the facts and circumstances alleged in the Complaint and Plaintiff's notice to the LWDA, including Labor Code sections §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, and the related IWC Wage Orders. The release as to these claims will be deemed effective when Defendant funds the settlement.

Exhibit 5 at Paragraph I(38).

d. Class Notice Process

On September 9, 2024, Defendant provided the Settlement Administrator with the Class Data. Nava Dec. ¶ 5. Prior to mailing, the Settlement Administrator conducted a National Change of Address (NCOA) search in an attempt to update the class list of addresses as accurately as possible. *Id.* at ¶ 6. A search of this database provides updated addresses for any individual who has moved in the previous four (4) years and notified the U.S. Postal Service of their change of address. On September 27, 2024, the Settlement Administrator mailed the Notices to 71 Class Members by U.S. First Class mail in English and Spanish. *Id.* at ¶ 7.

After mailing, as of the filing of this motion, nine (9) Notices were returned to the Settlement Administrator. Nava Dec. ¶ 8. The Settlement Administrator conducted a computerized skip trace on the nine (9) returned Notices in order to acquire updated addresses for the purpose of re-mailing the Notices. *Id.* This skip trace effort resulted in obtaining eight (8) updated address, to which Settlement Administrator re-mailed the Notice via U.S. First Class Mail. *Id.* As such, to date, one (1) Notice is considered undeliverable. Nava Dec. ¶ 10.

Class Members had until November 26, 2024 to respond to the settlement. To date, the settlement has received universal support from the Class Members. Not a single Class Member has submitted an objection or request for exclusion from the settlement, nor has any Class Member submitted a dispute as to the workweeks attributed to him or her. Nava Dec. ¶¶ 11-13. Therefore, all 71 Class Members are participating in the settlement, meaning 100% of the Class Members are

1 Participating Class Members. *Id.* at ¶ 14.

2 **e. Distribution of Settlement Funds**

3 No later than fifteen (15) business days after the Effective Final Settlement Date,⁷
4 Defendant shall provide the GSA to the Settlement Administrator to fund the Settlement and the
5 employer's share of payroll taxes due on the portion of the Individual Settlement Payments that is
6 allocated to wages. Not later than ten (10) business days after receiving the funds from Defendant,
7 the Settlement Administrator shall disburse: (1) the Individual Settlement Shares to each Class
8 Member and Aggrieved Employee; (2) the Attorney Fee Award and Cost Award to Class Counsel
9 for attorneys' fees and costs, as approved by the Court; (3) the Enhancement Payment paid to the
10 Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the
11 Court; and (5) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by
12 the Court.

13 Class Members must cash or deposit their Individual Settlement Payment checks within
14 one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are
15 not redeemed or deposited within one hundred and eighty (180) calendar days after mailing, the
16 Settlement Administrator will transmit the funds to Legal Aid at Work. Legal Aid at Work is a
17 nonprofit legal services organization that has been assisting low-income, working families for
18 more than 100 years. Legal Aid at Work's Wage Protection Program represents low wage workers
19 who are the victims of wage violations. The wage claims made by Legal Aid at Work's clients are
20 often the same type of claims made in wage-and-hour class actions brought by workers under the
21 federal Fair Labor Standards Act and under California wage-and-hour laws.

22 **f. Final Judgment**

23 Pursuant to Cal. Rules of Court, Rule 3.771(b), notice of the final judgment will be posted
24 on the Settlement Administrator's website. *See Exhibit 5* at Paragraph III(62)(H).

25
26
27 ⁷ "Effective Final Settlement Date" of the Settlement means when the final approval of the
28 settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention
at the time the court grants final approval of the settlement, the date the court enters judgment
granting final approval of the settlement.

1 **IV. ARGUMENT**

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

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

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

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

26
27 ⁸ See Memorandum of Points and Authorities in Support of Motion for Preliminary Approval,
28 pages 11-19. In addition to the *Dunk* factors, Class Counsel also detailed the other factors such as
the strengths of Plaintiff’s case, risks and costs of further litigation, as well as the reasonableness
of the GSA amount in light of *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

1 reaction to the settlement, the Court preliminarily presumed the settlement was fair, adequate and
2 reasonable. To date, not a single objection to the settlement has been submitted by any Class
3 Member to the Settlement Administrator. Thus, the settlement is entitled to the presumption that
4 it is fair and in all other respects proper and should be finally approved.

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

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

8 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
9 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
10 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
11 1132 (The “experienced trial judge is the best judge of the value of professional services rendered
in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.

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

23 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
24 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
25 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th
26 at 1270). It is not an abuse of discretion to choose one method over another as long as the method
27 chosen is applied consistently using percentage figures and/or rates that accurately reflect the
28 marketplace. In cases where class members present claims against a settlement amount and the

1 settlement agreement provides that the defendant agrees to paying the attorneys a percentage of
2 the same, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32.

3 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
4 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th
5 Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F. Supp. 494
6 (awarding attorneys' fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*
7 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195 (awarding
8 approximately 53% of the settlement amount as attorneys' fees). California courts routinely
9 approve class action attorneys' fees awards "averag[ing] around one-third of the recovery." *Chavez*
10 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of
11 contingency fee in marketplace was appropriate in class actions). The Supreme Court has explained
12 that "percentage of the fund method more accurately reflects the results achieved." *Laffitte*, 1 Cal.
13 5th at 439. In a similar wage and hour class action, *Laffitte v. Robert Half International, Inc.*, 1
14 Cal. 5th 480 (2016), the California Supreme Court affirmed an award of attorneys' fees equal to
15 1/3 of the common fund. Here, the requested fee is at this same percentage, and evidences all of
16 the same considerations which warranted the one-third fee in *Laffitte*.

17 In short, Class Counsel's fee request of \$60,000 (which represents one-third of the GSA)
18 is in line with awards in similar cases in California and nationwide and demonstrates that Class
19 Counsel's fee request is consistent with market rates and is reasonable.

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

22 Class Counsel applies for an award of attorneys' fees in the sum of \$60,000 (one-third of
23 the GSA), and litigation costs of \$26,444.64. Mara Dec. ¶ 15. California state and federal courts
24 have recognized that an appropriate method for determining an award of attorneys' fees is based
25 on a percentage of the total value of benefits made available to Class Members by the settlement,
26 also known as the "common fund" method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (*Serrano*
27 *III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th
28 Cir. 1977) 557 F.2d 759, 769.⁹ Where the amount of a settlement is a "certain easily calculable

⁹ The California Supreme Court has urged trial courts to consider class action federal authority.

1 sum of money,” California courts may calculate attorneys’ fees as a reasonable percentage of the
2 settlement. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14,
3 § 14:145; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is
4 preferred in class and representative actions because “it better approximates the workings of the
5 marketplace than the lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49. The purpose of
6 the common fund/percentage approach is to “spread litigation costs proportionally among all the
7 beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent, supra*,
8 557 F.2d at 769.

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

22 Courts have consistently recognized that class action litigation is increasingly necessary to
23 protect the rights of individuals whose injuries and/or damages are too small to economically
24 justify legal action on an individual basis. Accordingly, in determining a reasonable fee award,
25 courts award fees to serve as an economic incentive for lawyers to pursue such litigation in order
26 to achieve increased access to the judicial system for meritorious claims and to enhance deterrents
27 to wrongdoing. This is especially true in situations where multiple similar alleged wrongs would
28 not be economically feasible to pursue individually, such as here. *See A. Conte, Attorney Fee*

Green v. Obledo (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

1 *Awards* (2d Ed., 1993) 104, at 6.

2 When the lawsuit was originally filed, the prospect of a long, drawn-out battle with a
3 defendant represented by experienced counsel, was almost a certainty. By taking on this “battle”
4 on a contingency basis, Class Counsel risked substantial economic loss if the results were not
5 successful. This substantial risk is the reason that the courts approve the use of the percentage
6 method when a settlement is obtained by the efforts of class counsel. *See Vizcaino v. Microsoft*
7 (9th Cir. 2002) 290 F.3d 1043, 1048-49 (quotations omitted) (discussing the risks of engaging in
8 litigation without certainty of compensation).

9 Under the terms of the Agreement, Defendant will pay a Gross Settlement Amount of
10 \$180,000. An award of attorneys’ fees is to be calculated as a percentage of the total value of
11 benefits made available to the Class Members under the settlement. In light of Class Counsel’s
12 prosecution and resolution of the case, the requested fees are appropriate and reasonable.

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

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

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

23 Class Counsel’s fee request is reasonable when calculated using the lodestar method. Under
24 the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent
25 on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20
26 Cal. 3d 25, 48. The court then enhances this lodestar figure by a “multiplier” to account for a range
27 of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
28 success achieved. *Id.* at 49; see also *Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM*

1 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92
2 Cal.App.4th 819, 834, (“[t]here is no ... rule limiting the factors that may justify an exercise of
3 judicial discretion to [adjust the] lodestar”).

4 Class Counsel has worked 153 hours to date on this case and have calculated the lodestar
5 fee on those hours at \$108,600 at rates reflecting those currently earned in the marketplace. Mara
6 Dec. ¶ 16, **Exhibit 1**. Class Counsel respectfully request attorneys’ fees in the amount of \$60,000
7 (one-third of the GSA). All of the work and tasks performed by Class Counsel were reasonable
8 and necessary to the prosecution of this case and are reflected in the result achieved. Mara Dec. ¶
9 17. All services were performed by Class Counsel on a contingent basis. Mara Dec. ¶ 18. As Class
10 Counsel’s lodestar fee is in excess of their fee request, a multiplier on their lodestar fee is not
11 sought herein. Mara Dec. ¶ 19. In fact, the requested fee results in a so-called “negative multiplier”
12 which suggests the percentage of the fund amount is reasonable and fair. *See Chun-Hoon v. McKee*
13 *Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software, Inc. Securities*
14 *Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at *16.

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

16 Class Counsel’s hourly rates are between \$600 and \$800 and are in line with rates typically
17 approved in wage and hour class action litigation and which rates have been approved by Courts
18 in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego
19 County Superior Courts. Mara Dec. ¶¶ 21, 26; **Exhibit 2**, Westlaw Court Express’s Legal Billing
20 Report, Volume 14, Number 3, California Region for December 2012; **Exhibit 3**, 2014 Declaration
21 of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; **Exhibit 4**, 2012
22 National Law Journal Survey of Hourly Billing Rates for Partners and Associates.

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

1 Class Counsel's skill and experience support their hourly rates. Their practice is limited
2 exclusively to litigation, focusing on the representation of employees in wage and hour and
3 consumer class action matters. Mara Dec. ¶¶ 2-8, 22-24. As leading attorneys in the field of wage
4 and hour class action litigation, Plaintiff's counsel continually monitors the prevailing market rates
5 charged by both defense and plaintiff law firms and set the billing rates of their attorneys and
6 paralegals/law clerks to be consistent with the prevailing market rates in the private sector for
7 attorneys and staff of comparable skill, qualifications and experience. Other wage and hour
8 attorneys working as class counsel before California courts charge comparable if not higher rates.
9 Mara Dec., **Exh. 2**, Westlaw Court Express's Legal Billing Report, Volume 14, Number 3,
10 California Region for December 2012; **Exh. 3**, 2014 Declaration of Richard M. Pearl in *Hohnbaum*
11 *v. Brinker Restaurant Corp.* SDSC GIC834348; **Exh. 4**, 2012 National Law Journal Survey of
12 Hourly Billing Rates for Partners and Associates. Therefore, as they are in line with those of the
13 relevant community, Class Counsel's hourly rates are reasonable.

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

15 In determining a lodestar fee, reasonable hours include, in addition to time spent during
16 litigation, the time spent before the action was filed, including time spent interviewing clients,
17 investigating the facts and law, and preparing the pleadings. See *New York Gaslight Club, Inc. v.*
18 *Carey* (1980) 447 U.S. 54, 62; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th
19 440, 447. Further, the fee award should include fees incurred to establish and defend the attorneys'
20 fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639 ("*Serrano IV*"). Under California law,
21 counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

22 Class Counsel has expended a total of 153 hours on this case. The work performed by Class
23 Counsel in order to achieve a settlement that will provide valuable consideration to the Class,
24 **averaging a \$1,183.88 settlement payment per Class Member, with the highest estimated**
25 **award being \$3,387.07**, is outlined by Class Counsel in the declaration submitted herewith. Mara
26 Dec. ¶¶ 20, 25. Class Counsel have been actively involved in this case, prior to the commencement
27 of this action and up to the present, and Class Counsel's dedication to providing representation in
28 the case has precluded other employment. Here, Class Counsel's many tasks, in summary form,

1 included the following: pre-filing investigation and legal research; communicating with the Class
2 Representative; discussions with Class Members; researching and investigating California's ever-
3 evolving wage and hour laws regarding compensation, overtime, meal and rest periods, itemized
4 wage statements, waiting time penalties, and California's Unfair Competition Law; conducting
5 investigation into Defendant's pay-structures, policies for its non-exempt employees; drafting and
6 filing pleadings; drafting notice to the LWDA; making appearances at Court proceedings;
7 engaging in numerous interoffice discussions and conferences with Defense Counsel regarding a
8 variety of issues throughout the litigation and settlement; drafting stipulations; drafting and
9 propounding discovery; reviewing documents produced by Defendant; analyzing records
10 produced by Defendant with the assistance of expert; drafting the mediation brief and exposure
11 models; preparing for and attending mediation; drafting and revising the memorandum of
12 understanding; drafting and revising the settlement agreement and the Notice to the Class; drafting
13 preliminary approval papers; working with Settlement Administrator on the notice process;
14 reviewing, revising, and proofing Notice papers from the Settlement Administrator; reviewing
15 weekly status reports from the Settlement Administrator regarding Class participation; drafting
16 final approval papers, and preparing for and appearing at the Final Approval Hearing. Mara Dec.
17 ¶¶ 20, 25.

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

21 **vi. Costs of Litigation**

22 Class Counsel seeks reimbursement of the litigation costs and expenses of \$26,444.64.
23 Mara Dec. ¶ 27. These costs were all reasonable and necessary to the prosecution of this case and
24 the results achieved and are fair and reasonable.

25 **c. The Class Representative Enhancement Payment is Reasonable**

26 Class Counsel seeks approval of a Class Representative Enhancement Payment to the
27 named Plaintiff in the sum of \$2,500. In agreeing to the settlement, Plaintiff also agreed to a general
28 release of her claims. This release includes all claims, not just wage and hour claims. It should be

1 noted that when the Class Notices were mailed and published, the Class was informed that the
2 Class Representative would apply for this payment and, to date, no Class Members have objected.

3 There are also other factors supporting the request that Plaintiff receive \$2,500. The
4 requested Service Award is also reasonable in light of the benefits Plaintiff has conferred upon the
5 entire Class, **resulting in payments averaging \$1,183.88 and highest payment of \$3,387.07.**
6 The requested award is appropriate and reasonable based upon Plaintiff's time and effort expended
7 on this case, the risks she faced, and the outcome of this case. Plaintiff has submitted a declaration
8 detailing the efforts and time she expended on behalf of the Class in order to advance this case to
9 its successful conclusion. There is no question that this case would not have reached the same
10 result but for Plaintiff's involvement and input at all stages of the litigation.

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

1 that Plaintiff, here, championed a cause on behalf of others with potentially huge consequences.

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

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

25 Based on the foregoing, the \$2,500 Class Representative Enhancement Payment to the
26 named Class Representative is fair, appropriate, and justified in light of the work performed, risks
27 undertaken for payment of fees and costs if this case had not been successfully concluded, stigma
28 on future employment opportunities, and the benefits all Class Members.

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

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

9 Following the grant of final approval, the Settlement Administrator's duties will continue
10 in order to calculate and mail the individual settlement payments to Participating Class Members,
11 perform tax reporting obligations, disburse other payments as ordered by the Court, and perform
12 such other duties as set forth in the Agreement. Administration Costs in the amount of \$5,000 to
13 Apex for services rendered and to be rendered is fair and reasonable and should be granted.

14 **V. CONCLUSION**

15 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
16 of the settlement, and award Class Counsel attorneys' fees in the sum of \$60,000 and litigation
17 expenses of \$26,444.64, Class Representative Enhancement Payment in the sum of \$2,500 to
18 Plaintiff, Administration Costs in the amount of \$5,000 to Apex, and a payment to the LWDA in
19 the amount of \$1,500 (which is 75% of \$2,000 allocated to Plaintiff's claims under PAGA).

20
21 Dated: December 20, 2024

MARA LAW FIRM, PC

22
23 

24 David Mara, Esq.

Matthew Crawford, Esq.

25 Attorneys for Plaintiff MARICHU JEFFRIES on
26 behalf of herself, all others similarly situated, and on
27 behalf of the general public
28