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11 and the Putative Class

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF ALAMEDA**

14 JULIE DEAN, on behalf of herself and all others
15 similarly situated

16 Plaintiff,

17 vs.

18 FREEMODEL, INC.; JOHN GERALD
19 GARNER; and DOES 1 through 10, inclusive,

20 Defendants.

Case No.: 23CV038315

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT**

DATE: May 29, 2025
TIME: 10:00 A.M.
DEPT: 23
JUDGE: Hon. Michael Markman

Reservation Number: A-38315-001

Action Filed: July 14, 2023
FAC Filed: October 25, 2023
Trial Date: N/A

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on May 29, 2025 at 10:00 A.M. or as soon thereafter as the matter may be heard in Department 23 of the above-entitled Court, located at 1221 Oak Street, 4th Floor, Oakland, CA 94612, Plaintiff Julie Dean (“Plaintiff”), the named Plaintiff in this case against Defendants Freemodel, Inc. and John Gerald Garner (collectively, “Defendants”), will and hereby does move for an Order:

- 1) Finally approving the proposed Class and PAGA Representative Action Settlement Agreement (the “Settlement”) in the above-captioned case (the “Action”);
- 2) Finally certifying, pursuant to section 382 of the California Code of Civil Procedure, for settlement purposes only, of the proposed Settlement Class defined as follows: all individuals who entered into Project Director Agreements with Freemodel, Inc. and/or worked as Project Directors for Freemodel, Inc. in California between July 14, 2019, and the date of preliminary approval of the parties’ Settlement Agreement by the Court;
- 3) Finally approving a Service Award to Class Representative Julie Dean;
- 4) Finally approving reasonable attorneys’ fees and costs to Class Counsel;
- 5) Finally approving the payment of reasonable costs of administration to Apex Class Action from the Maximum Settlement Amount;
- 6) Entering a final judgment consistent with the terms of the Settlement; and
- 7) Retaining jurisdiction over the parties to enforce the terms of the judgment and make and enter judgement pursuant to Rule of Court 3.769, subdivision (h).

This motion, which Defendants do not oppose, is made pursuant to Rule of Court 3.769, subdivision (g).

The basis for this motion is that the proposed non-reversionary, non-claims-made Settlement is fair, adequate, and reasonable, and in the best interests of the Class, and that the procedures proposed by the parties have ensured adequate notice to the Class Members of their right to participate in, opt-out of, or object to the Settlement.

This motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities in Support of Plaintiff’s Motion for Final Approval of Class and Representative Action

1 Settlement; the Declaration of Hunter Pyle in Support of Plaintiff's Motion for Final Approval of
2 Class and Representative Action Settlement ("Pyle Decl.") and exhibits attached thereto; the
3 declaration of Julie Dean in Support of Plaintiff's Motion for Preliminary Approval of Class and
4 Representative Action Settlement ("Dean Decl."); the Declaration of Ryan McNamee in Support of
5 Plaintiff's Motion for Final Approval of Class and Representative Action Settlement ("McNamee
6 Decl."); the pleadings and other papers filed in this action; and any further oral or documentary
7 evidence or argument presented at the time of hearing.

8
9 DATED: May 2, 2025

HUNTER PYLE LAW, PC

10
11 By: 
12 Hunter Pyle
13 Andrea A. Núñez

14 Attorneys for Plaintiff Julie Dean
15 and the Putative Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff Julie Dean (“Plaintiff”) submits the following memorandum of points and
3 authorities in support of her Motion for Final Approval of Class and Representative Action
4 Settlement in the above-captioned matter.

5 **I. INTRODUCTION**

6 Pursuant to Rule 3.769 of the California Rules of Court, Plaintiff Julie Dean (“Plaintiff”)
7 respectfully requests that this Court grant final approval of a non-reversionary, non-claims-made
8 class-wide settlement of various wage and hour claims reached between Plaintiff and Defendants
9 Freemodel, Inc. (“Freemodel”) and John Gerald Garner (collectively, “Defendants”). (Plaintiff and
10 Defendants are collectively referred to here as the “Parties.”)

11 The Court granted preliminary approval of the Class and PAGA Representative Action
12 Settlement Agreement (the “Settlement”)¹ on December 12, 2024. (Pyle Decl., ¶¶ 3-4, Exhs. 1-2.)
13 Plaintiff now respectfully requests that this Court grant final approval of the Settlement, in which
14 Defendants have agreed to pay \$350,000 to the following Class,² consisting of 107 Class Members:
15 all individuals who entered into Project Director Agreements with Freemodel, Inc. and/or worked as
16 Project Directors for Freemodel, Inc. in California between July 14, 2019, and the date of
17 preliminary approval of the parties’ settlement agreement by the Court (the “Class Period”).
18 (Settlement, ¶ 2.5.)

19 The Settlement resolves a class action lawsuit pending before this Court (the “Action”), in
20 which Plaintiff has alleged various wage and hour violations. As discussed below, the Settlement
21 satisfies all criteria for preliminary approval under California law and falls well within the range of
22 reasonableness. For these reasons, as set forth more fully below, Plaintiff respectfully requests that
23 the Court grant Plaintiff’s Motion for Final Approval of Class and Representative Action Settlement.

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26 ¹ For ease of reference, the Settlement is attached to the Declaration of Hunter Pyle in Support of
27 Plaintiff’s Motion for Final Approval of Class Settlement as Exhibit 1 (“Settlement”), and the Order
28 Granting Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement is
attached as Exhibit 2 (“Preliminary Approval Order”), filed concurrently.

² All capitalized terms herein have the same meanings as those in the Settlement.

1 **II. SUMMARY OF THE ACTION**

2 **A. Factual and Procedural Background**

3 Plaintiff was a Project Director for Freemodel, a pre-sale home renovation company. (Pyle
4 Decl., ¶ 23.) John Gerald Garner is the Chief Executive Officer, Chief Financial Officer, and
5 Secretary for Freemodel. (*Id.* at ¶ 22.) Freemodel and Garner hired Project Directors to plan and
6 execute design projects for the homeowners and agents paying for Freemodel’s services. (*Ibid.*)

7 On July 14, 2023, Plaintiff commenced this Action by filing a complaint asserting causes of
8 action for: 1) failure to reimburse business expenses (Lab. Code § 2802); 2) failure to pay minimum
9 wages (Lab. Code §§ 226.2, 1182.11–1182.13, 1194, 1194.2, 1197 & 1198, IWC Wage Order No. 4-
10 2001); 3) failure to pay overtime wages (Lab. Code §§ 510 & 1194, IWC Wage Order No. 4-2001);
11 4) failure to provide off-duty meal periods (Lab. Code §§ 226.7 & 512, IWC Wage Order No. 4-
12 2001); 5) failure to authorize and permit rest periods (Lab. Code §§ 226.2 & 226.7, IWC Wage
13 Order No. 4-2001); 6) failure to provide accurate wage statements (Lab. Code § 226, IWC Wage
14 Order No. 4-2001); and 7) unlawful business practices under Business and Professions Code section
15 17200 *et seq.* (Pyle Decl., ¶ 24.)

16 On July 20, 2023, Plaintiff notified Defendants and the Labor and Workforce Development
17 Agency (“LWDA”) of Defendants’ alleged violations of the Private Attorneys General Act (Lab.
18 Code § 2698 *et seq.*) (“PAGA”). (Pyle Decl., ¶ 25.)

19 On October 25, 2023, Plaintiff filed a First Amended Complaint, adding claims for penalties
20 under PAGA, and individual claims for wrongful termination in violation of public policy and
21 breach of contract. (Pyle Decl., ¶ 26.)

22 **B. Investigation, Mediation, and Settlement**

23 Class Counsel conducted a thorough investigation into the facts relevant to this Action and
24 diligently pursued an investigation of Class Members’ claims against Defendants. (Pyle Decl., ¶ 27.)
25 Class Counsel spoke to Plaintiff and interviewed other Class Members about their job duties and the
26 claims asserted in the Action, along with Defendants’ available defenses. (*Ibid.*) Class Counsel also
27 reviewed relevant documents, such as Project Director Agreements between Class Members and
28

1 Freemodel, contracts between Freemodel and clients, Plaintiff's accounting spreadsheets used in
2 projects with Freemodel, and correspondence between Plaintiff and Freemodel employees. (*Ibid.*)
3 Additionally, Class Counsel reviewed data provided by Defendants and calculated Class Member
4 damages. (*Id.* at ¶ 28.)

5 Prior to mediation, the Parties met and conferred and agreed to an informal discovery plan
6 that would allow them to productively move forward with settlement discussions. (Pyle Decl., ¶ 29.)
7 Through informal discovery, Defendants produced and Class Counsel reviewed a spreadsheet that
8 included each class member's dates of employment, how many projects that had with Freemodel, the
9 total compensation they had received, and whether they had signed an arbitration agreement. (Pyle
10 Decl., ¶ 30.)

11 Defendants also produced Plaintiff's Project Director Agreement, which included
12 information regarding Project Director job duties, expectations, tools, and relationship with
13 Freemodel and Freemodel's clients. (Pyle Decl., ¶ 31.) Additionally, Defendants produced an email
14 thread that evidenced Plaintiff's work on various projects and provided information about Plaintiff's
15 job duties. (Pyle Decl., ¶ 32.)

16 Class Counsel then carefully reviewed these documents. Based on these documents and
17 interviews of Class Members, Class Counsel determined the ways in which Class Member job duties
18 were inconsistent with the independent contractor test outlined in Labor Code section 2775. (Pyle
19 Decl., ¶ 33.) Class Counsel also used this information to determine whether Project Directors were
20 not subject to the business-to-business exception codified in Labor Code section 2776. (*Ibid.*)

21 On February 14, 2024, the Parties attended a private mediation with mediator Hon. Ronald
22 Sabraw (Ret.). (Pyle Decl., ¶ 34.) The mediation lasted approximately nine hours, during which the
23 parties explained their respective positions to Judge Sabraw at length. (*Ibid.*) Plaintiff provided
24 Judge Sabraw with her detailed analysis of Defendants' liability and damages. (*Ibid.*) At the end of
25 the mediation, the Parties had not come to an agreement and agreed to consider a mediator's
26 proposal. (*Ibid.*)

1 The principal terms of the Parties’ agreement were outlined in a Memorandum of
2 Understanding. (Pyle Decl., ¶ 35.) The Parties then negotiated the terms of the Settlement
3 Agreement. (*Ibid.*)

4 **C. Preliminary Approval and Notice Process**

5 On September 20, 2024, Plaintiff filed a Notice of Motion and Motion for Preliminary
6 Approval of Class and Representative Action Settlement. On November 1, 2024, the Court issued an
7 order instructing Plaintiff to narrow the scope of released claims in the Settlement Agreement and to
8 update information on the Class Notice. (Pyle Decl., ¶ 40, Exh. 3, pp. 2-3.) The Court continued the
9 hearing on the Motion for Preliminary Approval and instructed that Plaintiff submit a revised
10 proposed order and declaration addressing the issues noted. (*Id.* at p. 4.)

11 On November 26, 2024, Plaintiff filed the Supplemental Declaration of Hunter Pyle in
12 Support of Plaintiff’s Motion for Preliminary Approval of Class and Representative Action
13 Settlement that included an updated Settlement Agreement and an updated Class Notice that
14 addressed the issues raised in the Court’s order. (Pyle Decl., ¶ 41.)

15 On December 12, 2024, the Court preliminarily approved the Settlement. (Pyle Decl., ¶ 42;
16 Preliminary Approval Order at p. 2.) The Court further appointed Plaintiff as Class Representative
17 and Plaintiff’s counsel as Class Counsel. (*Ibid.*) At that time, the Court also set a final settlement
18 approval hearing. (*Ibid.*)

19 On December 12, 2024, Class Counsel provided Apex Class Action (“Apex”) with the Court-
20 approved content for the Class Notice. Apex then generated a draft of the formatted Class Notice,
21 which received approval from the Parties’ Counsel before being mailed. (Declaration of Ryan
22 McNamee of Apex Class Action, LLC, in Support of Motion for Final Approval of Class Action
23 Settlement (“McNamee Decl.”), ¶ 4.)

24 On January 11, 2025, Defendants’ counsel provided Apex with the class data file, comprising
25 the names, social security numbers, last known mailing addresses, and the total number of relevant
26 workweeks worked by each Settlement Class Member. The data file was successfully uploaded to
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1 Apex's database, where it underwent a thorough review to identify any duplicates or potential
2 inconsistencies. The class list consisted of a total of 107 individuals. (McNamee Decl., ¶ 5.)

3 In preparation for the mailing process, all 107 names and addresses listed in the class list
4 underwent verification and updating against the National Change of Address (NCOA) database
5 maintained by the United States Postal Service (USPS). The purpose of this step was to ensure the
6 accuracy and validity of the Settlement Class Members' mailing addresses before sending out the
7 Class Notice. The NCOA database contains records of requested address changes submitted to the
8 USPS. If an updated address was found in the NCOA database, it was utilized for the mailing of the
9 Class Notice. However, in cases where no updated address was found in the NCOA database, the
10 original address provided by Defendants' counsel was used for the mailing of the Class Notices.
11 (McNamee Decl., ¶ 6.)

12 On January 24, 2025, the Class Notice was sent to all 107 individuals listed in the class list
13 using U.S First Class Mail. (McNamee Decl., ¶ 7.)

14 Apex received 11 returned Class Notices as undeliverable. Apex conducted a computerized
15 skip trace on the 11 returned Class Notices in order to acquire updated addresses for the purpose of
16 re-mailing the Class Notices. This skip trace effort resulted in obtaining 8 updated addresses, to
17 which Apex re-mailed the Class Notices via U.S First Class Mail. (McNamee Decl., ¶ 8.)

18 In total, 8 Class Notices were re-mailed as a result of Apex's skip-tracing efforts. (McNamee
19 Decl., ¶ 9.) Only 3 Class Notices were considered undeliverable because no updated address was
20 found despite conducting skip tracing. (McNamee Decl., ¶ 10.)

21 Apex did not receive any requests for exclusion by the opt-out deadline of March 25, 2025.
22 (McNamee Decl., ¶ 11.)

23 Apex did not receive any objections to the Settlement by the March 25, 2025, deadline for
24 submitting a written objection. (McNamee Decl., ¶ 12.)

25 Apex did not receive any disputes from Class Members by the March 25, 2025, deadline for
26 submitting a dispute. (McNamee Decl., ¶ 13.)

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1 **III. SUMMARY OF SETTLEMENT TERMS**

2 **A. Essential Terms of the Settlement**

3 The Settlement Agreement provides that Defendants shall pay the Maximum Settlement
4 Amount of \$350,000 to resolve the class and representative claims in the Action. (Settlement, ¶
5 2.34.) The essential terms of the Settlement are as follows:

6 **1. Class Definition**

7 The Class is defined as: all individuals who entered into Project Director Agreements with
8 Freemodel, Inc. and/or worked as Project Directors for Freemodel, Inc. in California between July
9 14, 2019, and the date of preliminary approval of the parties' settlement agreement by the Court (the
10 "Class Period"). (Settlement, ¶ 2.5.)

11 There are 107 Class Members. (McNamee Decl., ¶ 5.)

12 **2. Settlement Amount**

13 The Settlement Agreement provides that Defendants shall pay the Maximum Settlement
14 Amount of \$350,000 for the class and representative claims in the Action, which Defendants agree
15 to pay, on an all-in and non-reversionary basis, for the class and representative claims in the Action,
16 which is inclusive of any Class Counsel Award, PAGA Payment, Service Award to Plaintiff, and
17 Claims Administration Expenses. (Settlement, ¶ 2.34.)

18 The Settlement Agreement provides that any and all claims for PAGA penalties alleged in
19 the Action have been settled for \$35,000. (Settlement, ¶¶ 2.23, 4.4.) Seventy-five percent (\$26,250)
20 shall be paid to the LWDA, and twenty-five percent (\$8,750) shall be distributed to Aggrieved
21 Employees. (*Ibid.*; Pyle Decl., ¶ 45.)

22 The Claims Administrator Expenses shall not exceed \$4,000 and will be paid from the
23 Maximum Settlement Amount. (Settlement, ¶ 4.5; Pyle Decl., ¶ 46.)

24 For the reasons set forth more fully below, and in accordance with the terms of the
25 Settlement, Class Counsel respectfully requests the Court approve a Service Award of \$5,000 for
26 Plaintiff Julie Dean in recognition of her service to the Class. (Settlement, ¶ 2.32; Pyle Decl., ¶ 47;
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see also Declaration of Julie Dean in support of Plaintiff’s Motion for Preliminary Approval of Class and Representative Action Settlement (“Dean Decl.”), ¶¶ 1-18.)

For the reasons set forth more fully below, and in accordance with the terms of the Settlement, Class Counsel respectfully requests the Court approve award of attorneys’ fees (“Class Counsel Award”) in the amount of \$116,666.67, plus actual litigation costs in the amount of \$20,448.04. (Settlement, ¶ 4.3; Pyle Decl., ¶ 48.)

The Net Settlement Amount or Net Settlement Fund is the Maximum Settlement Amount minus the Class Counsel Award, Service Award to Plaintiff, PAGA Payment, and Claims Administrator Expenses. (Settlement, ¶¶ 2.22, 2.34; Pyle Decl., ¶ 49.) The Net Settlement Amount is currently estimated to be \$168,885.29, and the PAGA Settlement allocated to PAGA Employees is projected to be an additional \$8,750, as follows:

Maximum Settlement Amount	\$350,000.00
Less PAGA Payment	-\$35,000.00
Less Claims Administrator Expenses	-\$4,000.00
Less Service Award	-\$5,000.00
Less Attorneys’ Fees	-\$116,666.67
Less Litigation costs	-\$20,448.04
NET SETTLEMENT AMOUNT	\$168,885.29

PAGA Payment	\$35,000.00
Less Payment to LWDA	-\$26,250.00
PAYMENT TO AGGRIEVED EMPLOYEES	\$8,750.00

(Pyle Decl., ¶ 49.)

3. The Settlement Is Neither Claims-Made nor Reversionary

This is not a claims-made Settlement. (Pyle Decl., ¶ 50.) Settlement Class Members will receive a portion of the Net Distribution Fund as long as they do not opt out of the Settlement. (Settlement, ¶ 2.33.) All Aggrieved Employees will receive their portion of the PAGA Payment. (Settlement, ¶¶ 2.17, 2.23, 4.4; Pyle Decl., ¶ 50.)

1 The Settlement is also non-reversionary. (Settlement, ¶¶ 2.34, 4.1; Pyle Decl., ¶ 51.) Under
2 no circumstances will the Maximum Settlement Amount or any portion of it revert back to
3 Defendants. (Pyle Decl., ¶ 51; see Settlement, ¶¶ 4.1-4.5.)

4 **4. Settlement Administrator**

5 As agreed upon by the Parties, Apex Class Action has served as the Claims Administrator.
6 (Settlement, ¶ 2.3; Pyle Decl., ¶ 53.) Apex Class Action's team has been directly involved with class
7 action administration for a combined 15 years and has successfully managed numerous class action
8 cases during that time. (McNamee Decl., ¶ 2; see Pyle Decl., ¶ 53.) Apex's comprehensive fees and
9 costs for administering this Settlement, covering both incurred and anticipated expenses, amount to
10 \$4,000.00. (McNamee Decl., ¶ 19.) Apex will proceed with additional tasks related to this matter,
11 such as calculating settlement award payments, issuing and mailing settlement award checks,
12 handling necessary tax filings and reporting on these payments, and any other tasks mutually agreed
13 upon by the Parties or ordered by the Court for Apex to undertake. (*Ibid.*) Class Counsel considered
14 four bids before choosing Apex. (Pyle Decl., ¶ 53.)

15 **5. Calculation And Distribution of Payments**

16 Each Settlement Class Member will receive a pro-rata share of the Net Settlement Fund
17 based on the number of semi-monthly periods the Class Member was employed by Defendants
18 during the Class Period (the "Individual Settlement Share"). (Settlement, ¶¶ 2.19, 4.6.) Each Class
19 Member's number of semi-monthly periods will be based on the number of semi-monthly periods
20 between July 14, 2019, or the date of execution of their respective Project Director Agreements
21 (whichever is later) and the date of Preliminary Approval or the date their respective relationships
22 ended with Defendants (whichever is earlier), contained in the records kept by Defendants in the
23 ordinary course of business during the Class Period. (Settlement, ¶ 4.6.)

24 Individual Settlement Shares will be characterized as 20 percent for reimbursement of
25 expenses, 60 percent penalties, and 20 percent interest. (Settlement, ¶ 4.6, subd. (b).) Each Class
26 Member's gross settlement award will be reported on a 1099 Form. (*Ibid.*; Pyle Decl., ¶ 55.) This
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1 allocation roughly tracks the proportion of these components in Plaintiff’s damages model. (Pyle
2 Decl., ¶ 55.)

3 Aggrieved Employees will receive an Individual PAGA Payment that consists of a pro-rata
4 share of twenty-five percent of the PAGA Payment (\$8,750) based on the number of semi-monthly
5 periods between July 20, 2022, or the date of execution of their respective Project Director
6 Agreements (whichever is later) and the date of Preliminary Approval or the date their respective
7 relationships ended with Defendants (whichever is earlier). (Settlement, ¶¶ 4.4, 4.7.) The Individual
8 PAGA Payment to be made to each Aggrieved Employee shall be calculated by multiplying the
9 value of a semi-monthly period by the number of semi-monthly periods worked by the Aggrieved
10 Employee during the PAGA Period. (*Id.* at ¶ 4.7.) Individual PAGA Payments will be allocated as
11 one hundred percent penalties to be reported on IRS Form 1099. (*Id.* at ¶ 4.9.) The remaining
12 seventy-five percent of the PAGA Payment (\$26,250) of the PAGA Payment will be distributed to
13 the LWDA. (Settlement, ¶¶ 2.23, 4.4; Pyle Decl., ¶ 56.)

14 **6. Mailing of Checks**

15 Within 30 calendar days of receipt of the Maximum Settlement Amount, Apex will make all
16 disbursements under the Settlement Agreement. (Settlement, ¶ 10.2.) The checks will remain
17 negotiable for 180 days from the date of mailing. (*Id.* at ¶ 2.35.)

18 **7. *Cy Pres* Beneficiary**

19 Under Code of Civil Procedure section 384, subdivision (b), *cy pres* awards may be made to
20 “nonprofit organizations or foundations to support projects that will benefit the class or similarly
21 situated persons, or that promote the law consistent with the objectives and purposes of the
22 underlying cause of action . . . or to nonprofit organizations providing civil legal services to the
23 indigent.”

24 Redistributing any uncashed checks to Class Members would result in additional Claims
25 Administration Expenses. (Pyle Decl., ¶ 57.)

26 Accordingly, any funds that remain from uncashed or unclaimed Settlement checks will be
27 distributed to Legal Aid at Work, the *cy pres* recipient agreed upon by the Parties. (Settlement, ¶
28

1 4.17; Pyle Decl., ¶ 59.) Legal Aid at Work is a qualified *cy pres* designee under section 384 because
2 it is a “nonprofit organization[] providing civil legal services to the indigent.” (Pyle Decl., ¶ 59.)
3 Class Counsel has no involvement in the governance of Legal Aid at Work. (*Ibid.*)

4 If the Court approves the Settlement, it must make and enter judgment. (See Rule of Court
5 3.769, subd. (h).) The judgment must include a provision for the retention of the Court’s jurisdiction
6 over the Parties to enforce the terms of the judgment. (*Ibid.*)

7 After the Court has granted Final Approval and ordered the entry of judgment, pursuant to
8 California Code of Civil Procedure section 664.6 and California Rule of Court 3.769, subdivision
9 (h), the Parties request that the Court retain continuing jurisdiction over Plaintiff, Defendants, and
10 Class Members, as to all matters concerning the administration, consummation, and enforcement of
11 the Settlement Agreement. (Settlement, ¶ 9.2.)

12 **IV. THE COURT SHOULD CONFIRM ITS CONDITIONAL CERTIFICATION OF THE** 13 **CLASS FOR SETTLEMENT PURPOSES**

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

20 Here, the Court previously found that the proposed Class meets all the requirements for class
21 certification for settlement purposes when it granted preliminary approval of the Settlement on
22 December 12, 2024. (See generally Preliminary Approval Order at pp. 1-2; Pyle Decl., ¶ 60.)

23 Subsequent to the Court’s order granting preliminary approval, no events have cast doubt on
24 the propriety of this determination. In fact, the reaction of the Class Members to the Settlement has
25 been overwhelmingly in support of the Settlement, with not a single Class Member objecting to it or
26 opting out. (See McNamee Decl., ¶¶ 11–12.) Accordingly, the Court should confirm its conditional
27 certification of the proposed Class.
28

1 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

2 A class action may not be dismissed, settled, or compromised without the approval of the
3 Court after hearing. (Civ. Code § 1781, subd. (f); Rule of Court 3.769, subd. (a).) Before final
4 approval, a court must conduct an inquiry into the fairness of the proposed Settlement. (Rule of
5 Court 3.769, subd. (g).) The trial court has broad discretion to determine whether a class action
6 settlement is fair, reasonable, and adequate. (See *Munoz v. BCI Coca-Cola Bottling Co. of Los*
7 *Angeles* (2010) 186 Cal.App.4th 399, 407; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
8 224, 235.)

9 In exercising its discretion, the Court considers relevant factors, such as “the strength of the
10 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of
11 maintaining class action status through trial, the amount offered in settlement, the extent of
12 discovery completed and the stage of the proceedings, the experience and views of counsel, the
13 presence of a governmental participant, and the reaction of the class members to the proposed
14 settlement.” (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, quotation marks and citations
15 omitted.)

16 A presumption of fairness exists where: (1) the settlement is reached through arm’s-length
17 bargaining; (2) investigation and discovery are sufficient to allow counsel and the Court to act
18 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
19 small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; see also *Kullar v. Foot Locker*
20 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, [discussing standards for final approval of class action
21 settlement].)

22 Here, in its Preliminary Approval Order, the Court found that the “terms of the settlement
23 and notice procedures appear generally fair, reasonable and adequate.” (Preliminary Approval Order
24 at p. 2.) Nothing has occurred that would disturb the Court’s findings. Therefore, for the reasons set
25 forth below, Plaintiff respectfully asks the Court to affirm that the Settlement is fair, reasonable, and
26 adequate to all parties involved.

1 **A. The Court Should Affirm its Preliminary Finding That The Settlement is Fair,**
2 **Reasonable, and Adequate**

3 **1. The Settlement Was Reached Through Arm’s-Length Bargaining**

4 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
5 reached through arm’s-length bargaining.” (*Wershba, supra*, 91 Cal.App.4th at 245.) In this case, the
6 Settlement was reached after arm’s-length negotiations between the Parties. (Pyle Decl., ¶ 62.)

7 In reaching the Settlement, Class Counsel relied on their substantial litigation experience in
8 similar employment class actions. (Pyle Decl., ¶ 63.) Information gathered from investigation and
9 informal discovery informed Class Counsel’s assessment of the strengths and weaknesses of the case
10 and the benefits of the Settlement. (*Ibid.*) Thus, the Settlement is the product of informed and non-
11 collusive arm’s-length bargaining and is entitled to a presumption of fairness.

12 **2. The Investigation and Discovery Conducted Were Sufficient to Allow**
13 **Counsel and the Court to Act Intelligently**

14 The extent of investigation and informal discovery conducted is an indicator of both Class
15 Counsel’s familiarity with the case and of Plaintiff’s possession of enough information to make well-
16 informed decisions. (See *In re Omnivision Techs.* (N.D.Cal. 2007) 559 F.Supp.2d 1036, 1042.)

17 Class Counsel conducted a thorough investigation into the facts of the Action. (See Pyle
18 Decl., ¶¶ 27-33.) The Parties engaged in extensive informal discovery. (*Ibid.*) Plaintiff conducted a
19 comprehensive review of the documents and data Defendants provided and determined Class
20 Members’ potential damages based on the legal violations alleged against Defendants. (*Ibid.*)

21 The Parties engaged in good faith, arm’s-length settlement negotiations with the assistance of
22 Judge Sabraw. (Pyle Decl., ¶ 34.) The Parties ultimately resolved the matter with the assistance of
23 Judge Sabraw. (*Ibid.*)

24 In reaching the Settlement, Class Counsel relied on their substantial litigation experience in
25 similar employment class actions. (Pyle Decl., ¶ 36.)

26 Plaintiff recognizes the risks, expense and length of protracted proceedings necessary to
27 continue the litigation and any possible appeals. (Pyle Decl., ¶ 37.) Plaintiff has also taken into
28 account the uncertainty and risks of further litigation, including the risk of significant delay, the risk

1 that the Court may not certify the Class or may later decertify it, and potential appellate issues. (*Id.*
2 at ¶ 38.) Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims,
3 Defendants’ defenses, and the difficulties in establishing damages. (*Id.* at ¶ 39.) Information gleaned
4 from investigation and informal discovery informed Class Counsel’s assessment of the strengths and
5 weaknesses of the case and the benefits of the Settlement. (*Id.* ¶ 36.) Thus, the Settlement is the
6 product of sufficient investigation and discovery to allow Class Counsel and the Court to act
7 intelligently. (*Id.* ¶ 39.)

8 **3. The Experience and Views of Class Counsel Favor Final Approval**

9 “The recommendations of plaintiffs’ counsel should be given a presumption of
10 reasonableness.” (*In re Omnivision Techs, supra*, 559 F.Supp.2d at p. 1043, quotation marks and
11 citation omitted.) “The court undoubtedly should give considerable weight to the competency and
12 integrity of counsel . . . in assuring itself that a settlement agreement represents an arm’s-length
13 transaction entered without self-dealing or other potential misconduct.” (*Kullar, supra*, 168
14 Cal.App.4th at 129.)

15 Plaintiff and Class Counsel have vigorously prosecuted this case and will continue to do so.
16 (Pyle Decl., ¶ 64.) Information gathered from Class Counsel’s investigation and discovery informed
17 Class Counsel’s assessment of the merits and risks of the case and the benefits of the Settlement.
18 (*Ibid.*) Class Counsel conducted a thorough investigation into the facts of the Action. (*Ibid.*) Based
19 on an independent investigation and evaluation, Class Counsel believe that the Settlement is fair,
20 reasonable, and adequate, and is in the best interest of the Class Members in light of all known facts
21 and circumstances, including the risk of significant delay, the risk that Defendants will prevail on its
22 defenses, and potential appellate issues. (*Ibid.*)

23 In addition to being thoroughly familiar with this case, Class Counsel has extensive expertise
24 in litigating wage and hour class actions like this and is therefore well-qualified to represent Plaintiff
25 and the Class Members. (Pyle Decl., ¶¶ 6-20.) Class Counsel’s experience is detailed in the
26 declaration of counsel filed herewith. (*Ibid.*) The recommendation of Class Counsel thus also weighs
27 in favor of Settlement approval.

1 **4. The 100% Participation Rate and Absence of Objections Support Final**
2 **Approval**

3 Class Members’ reaction to the Settlement is further evidence that the Settlement is
4 reasonable. “It is established that the absence of a large number of objections to a proposed class
5 action settlement raises a strong presumption that the terms of a proposed class settlement action are
6 favorable to the class members.” (*In re Omnivision Techs.*, *supra*, 559 F.Supp.2d at p. 1043,
7 quoting *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528-529;
8 see also *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

9 Here, no Class Member submitted a written objection to the Settlement. (See McNamee
10 Decl., ¶¶ 11–12.) In addition, zero Class Members opted out of the Settlement, resulting in a
11 participation rate of 100%. (*Ibid.*) This overwhelming support is compelling evidence that the
12 Settlement is reasonable. (See *Nat’l Rural Telecomms. Coop.*, *supra*, 221 F.R.D. at p. 529 [“The
13 absence of a single objection to the Proposed Settlement provides further support for final approval
14 of the Proposed Settlement.”].)

15 **5. The LWDA Has Been Notified and Has Not Objected to the Proposed**
16 **Settlement.**

17 The LWDA was notified of the PAGA aspects of the Settlement on February 6, 2025, in
18 conformity with Labor Code section 2699(1)(2). (Pyle Decl., ¶ 65) To date, the LWDA has not
19 objected to the Settlement. (*Ibid.*)

20 **B. The Settlement is Within the Range of Reasonableness**

21 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
22 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under
23 all of the circumstances.” (*Wershba*, *supra*, 91 Cal.App.4th at p. 250.) As set forth in Plaintiff’s
24 Motion for Preliminary Approval, for the purposes of settlement only, Plaintiff acknowledges that
25 this case faces significant hurdles: the burdens of proof necessary to establish liability for the claims
26 asserted in the Action, Defendants’ defenses to those claims, and the difficulties in establishing
27 damages. (See Plaintiff’s Motion for Preliminary Approval (“MPA”) at p. 6:5-17.)
28

1 The Court must make an “independent assessment of the reasonableness of the terms of the
2 settlement” prior to granting preliminary and final approval. (*Clark v. American Residential Services*
3 *LLC* (2009) 175 Cal.App.4th 785, 798; *Kullar, supra*, 168 Cal.App.4th at pp. 127–28, 130, 133.) To
4 do so requires the parties to submit “basic information about the nature and magnitude of the claims
5 in question and the basis for concluding that the consideration being paid for the release of those
6 claims represents a reasonable compromise.” (*Kullar, supra*, 168 Cal.App.4th at p. 133; *Dunk,*
7 *supra*, 48 Cal.App.4th at p. 1802.) However, the Court should not “attempt to decide the merits of
8 the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.”
9 (*Kullar, supra*, 168 Cal.App.4th at p. 133.)

10 Here, each Settlement Class Member will receive an average Individual Settlement Payment
11 of \$1,481.31. (McNamee Decl., ¶ 16.) The Settlement therefore provides meaningful relief to Class
12 Members for the disputed wage and hour violations alleged in the Action. (Pyle Decl., ¶ 66.)

13 The Settlement avoids the risks of litigation while ensuring that Settlement Class Members
14 receive substantial consideration for releasing their claims. (Pyle Decl., ¶ 67.) The Maximum
15 Settlement Amount of \$350,000 is also well within the range of reasonableness. (See MPA at pp.
16 12–22.) As described in detail in Plaintiff’s Motion for Preliminary Approval, based on Class
17 Counsel’s review of the extensive data provided by Defendants for mediation, Class Counsel
18 estimates the reasonable settlement value of the Action to be approximately \$ 211,610. (*Ibid.*) The
19 Maximum Settlement Amount of \$350,000 thus represents more than 100 percent of Class Counsel’s
20 reasonable settlement value of the Action and is therefore an excellent result. (*Ibid.*) In granting
21 preliminary approval, the Court found the Settlement appeared “generally fair, reasonable and
22 adequate.” (Preliminary Approval Order at p. 2.) The fact that no Class Member has objected and or
23 opted out further confirms the Settlement’s reasonableness. (See McNamee Decl., ¶¶ 11–12.)

24 **C. The Release Is Narrowly Tailored**

25 The release of claims in the Settlement is narrowly tailored and includes:

26 [A] claims, charges, complaints, liens, demands, causes of action, obligations,
27 damages and liabilities, from July 14, 2019, through the date of preliminary approval
28 of the parties’ settlement agreement by the Court (“Relevant Time Period”), that each
participating class member had, now has, or may hereafter claim to have during the

1 Relevant Time Period against Defendants, its agents, officers, employees, directors,
2 owners, subsidiaries, DBA's, affiliates and predecessor, successor, and parent
3 companies ("Released Parties"), and that were asserted in the Action, or that arise
4 from or could have been asserted based on any of the facts alleged in Plaintiff's First
5 Amended Complaint ("Complaint") and/or Notice to the California Labor Workforce
6 Development Agency, regardless of whether such claims arise under federal, state
7 and/or local law, statute, ordinance, regulation, common law, or other source of law.
8 The Released Claims specifically include, but are not limited to Labor Code §§ 226,
9 226.2, 226.7, 510, 512, 1182.11–1182.13, 1194, 1194.2, 1197, 1198, and 2802 and
10 the related IWC Wage Order No. 4-2001 and Business & Professions Code §§ 17200,
11 et seq. claims based on alleged violations of these Labor Code and Wage Order
12 provisions) and all other claims, such as those under the California Labor Code,
13 Wage Orders, regulations, and/or other provisions of law, that could have been
14 pleaded based on the facts asserted in the Action, including: (1) Failure to Reimburse
15 Business Expenses; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime
16 Wages; (4) Failure to Provide Off-Duty Meal Periods; (5) Failure to Authorize and
17 Permit Rest Periods; (6) Failure to Provide Accurate Wage Statements; (7) Unlawful
18 Business Practices; (8) Civil Penalties Pursuant to PAGA as described in Plaintiff's
19 letter to the LWDA, dated July 20, 2023, as well as interest, fees, and costs.

20 (Settlement, ¶ 2.29.)

21 The release encompasses only those claims that were alleged or could have been alleged
22 based on the facts alleged in the Action.³ (See *Fraser v. Asus Computer Int'l* (N.D. Cal. Dec. 21,
23 2012) No. C 12–00652 WHA, 2012 WL 6680142, at *3 ["The focus must be on protecting the rights
24 of absent class members. . . . What they will receive in exchange for the extinguishment and how fair
25 will the notice and claim process be for the exchange are key questions that the district judge must
26 ask, for once both counsel reach a deal, there is no one to argue against the proposal so as to prevent
27 'overreaching or collusion'"]; *Collins v. Cargill Meat Solutions Corp.* (E.D. Cal. 2011) 274 F.R.D.
28 294, 303 [approving release because it "appropriately track[s] the breadth of Plaintiffs' allegations in
the action and the settlement does not release unrelated claims that class members may have against
defendants"].)

³ After Plaintiff filed a Motion for Preliminary Approval of Class and Representative Action Settlement, the Court ordered that the release not include language releasing "unknown" or "unsuspected" claims. (Pyle Decl., ¶5, Exh. 3 at p. 2.) The Court also ordered that the PAGA release be limited to the scope of PAGA notice letter. (*Id.* at p. 3.) On November 26, 2024, Plaintiff submitted a revised Settlement Agreement narrowing the release, consistent with the Court's Order. (Pyle Decl., ¶ 41.) The Court granted preliminary approval of the revised settlement. (Preliminary Approval Order at p. 2.)

1 **D. The Class Received Adequate Notice**

2 The “notice given to the class must fairly appraise the class members of the terms of the
3 proposed compromise and of the options open to dissenting class members.” (*Wershba, supra*, 91
4 Cal.App.4th at pp. 251–52 [internal citation omitted].) “The purpose of class notice in the context of
5 a settlement is to give class members sufficient information to decide whether they should accept the
6 benefits offered, opt-out and pursue their own remedies, or object to the settlement.” (*Id.* at p. 252;
7 Rule of Court 3.769, subd. (f).) The trial court has broad discretion in approving the contents of a
8 class action notice and the manner by which class members are given notice. (See *Wershba, supra*,
9 91 Cal.App.4th at p. 252; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
10 Cal.App.4th 1135, 1164.)

11 In its initial Preliminary Approval Order, the Court found that the proposed Class Notice
12 procedure “appear[ed] generally fair, reasonable and adequate.” (Preliminary Approval Order at p.
13 2.)⁴

14 Thus, the Class Notice adequately protected Class Members’ due process rights. (See Pyle
15 Decl., ¶¶ 3–4, 36, Exhs. 2 & 3; see *McNamee Decl.* ¶¶ 3–4.) It reasonably apprised them of the
16 Settlement and approval process, and Class Counsel and Apex have made their best efforts to
17 encourage participation and provide information to Class Members. For these reasons, the Class
18 received adequate notice of the Settlement and the opportunity to request exclusion or to object.

19 **E. The Requested Settlement Administration Costs Are Reasonable**

20 Apex has fulfilled its duties to prepare and send notices to all Class Members. (See generally
21 *McNamee Decl.*) It also provided weekly updates to Class Counsel. (Pyle Decl., ¶ 68.) Apex’s
22 Group’s total costs in connection with administration of this Settlement, including fees incurred and
23 anticipated future costs for completion, are \$4,000. (*McNamee Decl.*, ¶ 19.) Apex’s will proceed
24 with additional tasks related to this matter, such as calculating settlement award payments, issuing
25 and mailing settlement award checks, handling necessary tax filings and reporting on these
26

27 ⁴ Plaintiff submitted a modified Notice on November 26, 2024, to clarify that the Court does not
28 require written objections but will hear from any objectors at the hearing on the motion for final
approval, as ordered by the Court. (See Pyle Decl. ¶ 5, Exh. 3.)

1 payments, and any other tasks mutually agreed upon by the Parties or ordered by the Court for Apex
2 to undertake. (*Ibid.*)

3 Accordingly, Plaintiffs request that Apex be paid a fee of \$4,000 out of the Maximum
4 Settlement Amount to compensate it for its work related to the administration of the Settlement.

5 **F. The Court Should Approve the Proposed *Cy Pres* Beneficiary**

6 Code of Civil Procedure section 384 requires a determination of the total amount payable to
7 class members, a subsequent accounting of unpaid class funds, and a *cy pres* distribution of those
8 residual funds. Settlement payments to class members that go uncashed may constitute residue that
9 must be distributed to *cy pres* beneficiaries. (See *Cunef v. Verizon California, Inc.* (2008) 167
10 Cal.App.4th 718, 727.)

11 In general, *cy pres* awards may be made to “nonprofit organizations or foundations to support
12 projects that will benefit the class or similarly situated persons, or that promote the law consistent
13 with the objectives and purposes of the underlying cause of action . . . or to nonprofit organizations
14 providing civil legal services to the indigent.” (Code Civ. Proc. § 384, subd. (b).)

15 Here, Plaintiff proposes that the Court designate Legal Aid at Work as *cy pres* beneficiary. A
16 *cy pres* beneficiary is needed because some checks will be for small amounts and will go
17 undeposited. Redistributing these small amounts would be impractical given the mailing and
18 administrative costs required. (Pyle Decl., ¶ 57.) Defendants do not oppose this request. (*Ibid.*)

19 Legal Aid at Work is a qualified *cy pres* designee under section 384 because it is a
20 California-based nonprofit that provides legal aid to low-income, working families, whose mission
21 includes enforcing workplace protections through education, litigation, and policy advocacy.
22 (Declaration of Joan Graff (“Graff Decl.”), ¶¶ 4-31.) Plaintiff and Class Counsel do not have an
23 interest in Legal Aid at Work, including its governance. (Pyle Decl., ¶ 59.)

24 **VI. ATTORNEYS’ FEES AND COSTS**

25 **A. Standard of Review**

26 Plaintiffs and Settlement Class Members, as the prevailing parties in settlement, are entitled
27 to recover their attorneys’ fees and costs for their wage claims. (See Lab. Code §§ 218.5, 226(e),
28

1 1194, 2699(g), 2802; Code Civ. Proc. § 1021.5(a).) A fee award is justified where the legal action
2 has produced its benefits by way of a voluntary settlement. (See, e.g., *Maria P. v. Riles* (1987) 43
3 Cal.3d 1281, 1290–1291; *Westside Cmty. for Indep. Living, Inc. v. Obledo* (1983) 33 Cal.3d 348,
4 352–353.)

5 When a settlement results in a common fund for the benefit of a class, a court may award
6 class counsel fees as a percentage of the fund. (*Wershba, supra*, 91 Cal.App.4th at 254.) The
7 California Supreme Court confirmed that the percentage of common fund method is appropriate in
8 class actions. (*Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506.) Specifically, in *Laffitte*,
9 the California Supreme Court held:

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

14 (*Id.*, at p. 503; see also *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“*Serrano III*”) “[W]hen a number
15 of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs
16 for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
17 may be awarded attorney’s fees out of the fund”]; *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627 [In
18 awarding a fee from the common-fund obtained for the benefit of all parties, the trial court acts
19 within its equitable power to prevent the other parties’ unjust enrichment].)

20 *Laffitte* also held that courts have discretion to assess the reasonableness of fee awards with
21 tools such as the lodestar cross-check, although they need not do so. (*Laffitte, supra*, 1 Cal.5th at p.
22 506.)

23 **B. Plaintiff’s Requested Attorneys’ Fees Are Fair and Reasonable**

24 The common fund approach continues to be a preferred method of awarding fees. Since
25 *Serrano III*, there has been a “ground swell of support for mandating the percentage-of-the-fund
26 approach in common fund cases.” (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.)
27
28

1 Common fund awards are normally based upon the total amount of the fund created. (*Williams v.*
2 *MGM-Pathe Communs. Co.* (9th Cir. 1997) 129 F.3d 1026, 1027.)

3 Here, there is a defined and clearly traceable monetary benefit to the Class: \$350,000.
4 (Settlement, ¶ 2.34.) The Settlement is non-reversionary, and under no circumstances will any
5 portion of it revert to Defendants. (*Ibid.*) Therefore, the Court can base an award of attorneys’ fees
6 on the Settlement Class Members’ benefit using the common fund approach. (*Lealao, supra*, 82
7 Cal.App.4th at pp. 28–36, 50–51 [noting that percentage of the fund awards are appropriate in cases
8 where the common benefit can be quantified]; *Serrano III, supra*, 20 Cal.3d at pp. 35–40.)

9 As to the amount, “[e]mpirical studies show that, regardless whether the percentage method
10 or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”
11 (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn.11, quoting *Shaw v. Toshiba Am. Info.*
12 *Sys., Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; see also *In re Activision Sec. Litigation* (1989)
13 723 F.Supp. 1373, 1375 [“whatever method is used and no matter what billing records are submitted
14 . . . the result is an award that almost always hovers around 30% of the fund”].)

15 Plaintiff’s request for one-third (33.33%) of the Maximum Settlement Amount is therefore
16 reasonable and in accord with common practice. Class Counsel Hunter Pyle Law has recently had
17 requests for attorneys’ fees equaling one-third (33.33%) of the common fund approved in numerous
18 cases, including *Kostyuk v. Golden State Overnight Delivery Serv., Inc.* (Alameda Super. Ct., No.
19 RG14727191, April 7, 2017); *Newcomb, et al. v. J.B. Hunt Transp., Inc.* (Alameda Super. Ct., No.
20 RG16815734, November 3, 2017); *James v. Packers Sanitation Servs., LTD. Inc.* (Alameda Super.
21 Ct., No. RG16822242, June 25, 2019); *Winston, et al. v. Comcast Spectacor Holding Co., LLC et al.*
22 (Alameda Super. Ct., No. RG18887584, July 14, 2020); *Olivera, et al. v. C & B Delivery Serv., et al.*
23 (Alameda Super. Ct., No. RG20062287, Sept. 14, 2021); *Langlands et al. v. The Board of Trustees*
24 *of the Leland Stanford Junior Univ., et al.* (Santa Clara Super. Ct., No. 19CV343871, October 4,
25 2024); and *Roper v. Golden State Urgent Care Providers, et al.* (Santa Clara Super. Ct., No.
26 21CV386281, January 24, 2025. (Pyle Decl., ¶ 11.)

1 Other examples of California courts approving one-third of the common fund for attorney's
2 fees in similar cases abound. (See, e.g., *Big Lots Overtime Cases* (San Bernardino Super. Ct., JCC
3 No. 4283, Feb. 4, 2004); *Davis v. The Money Store, Inc.* (Sacramento Super. Ct., No. 99AS01716,
4 Dec. 26, 2000); *Ellmore v. Ditech Funding Corp.* (C.D. Cal., No. SAVC 01-0093, Sept. 12, 2002);
5 *Miskell v. Auto. Club of S. Cal.* (Orange County Super. Ct., No. 01CC09035, May 27, 2003);
6 *Cassaro v. Spaghetti Factory* (Orange County Super. Court, No. 01CC02500, January 5, 2004).)

7 Federal courts are in accord. (E.g., *Schiller v. David's Bridal, Inc.*, No. 1:10-CV-00616-AWI,
8 2012 WL 2117001, at *19 (E.D. Cal. June 11, 2012) [listing numerous class cases with fee awards
9 amounting to one-third of the recovery].)

10 An award of 33.33% of the Maximum Settlement Amount is further supported by the
11 excellent results in this case. As discussed in Plaintiffs' Motion for Preliminary Approval, Plaintiff
12 calculated the reasonable settlement value of the case to be approximately \$211,610. (See MPA at
13 pp. 13–22.) The proposed Maximum Settlement Amount of \$350,000 thus represents more than
14 Plaintiff's reasonably forecasted recovery, including penalties. (Pyle Decl., ¶ 69.) Settlement Class
15 Members will receive an average Individual Settlement Payment of \$1,481.31. (McNamee Decl., ¶
16 16.) They will not have to wait years of litigation to achieve relief.

17 Additionally, no Class Members have objected to the Settlement or opted out, resulting in a
18 participation rate of 100%. (See McNamee Decl., ¶¶ 11–12.) This response confirms that the
19 Settlement is an excellent result.

20 Consequently, Plaintiff respectfully submits that the requested fee of \$116,666.67 is fair
21 compensation for obtaining an excellent result for the Class and, in doing so, undertaking complex,
22 risky, potentially expensive, and time-consuming litigation on a contingent basis. (See Pyle Decl., ¶¶
23 27-39, 70.)

24 **C. The Lodestar Method Confirms the Attorneys' Fees Are Appropriate**

25 Plaintiff respectfully request that the Court apply the percentage-of-the-fund approach.
26 However, Class Counsel's requested attorneys' fees are also justified based on the lodestar method.

Under the lodestar method, a court first computes the lodestar by multiplying the hours reasonably expended by each attorney or legal staff member by his or her reasonable hourly rate. (*Serrano III, supra*, 20 Cal.3d at p. 48.) A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The Court may consider other factors, including the attorney's skill and experience, the nature of the work performed, the relevant area of expertise, and the attorney's customary billing rates. (*Flannery v. Cal. Highway Patrol* (1998) 61 Cal.App.4th 629, 632.)

1. Class Counsel's Hours and Rates Are Reasonable

a. Hunter Pyle Law

From the inception of this case to the date of this filing, Class Counsel at Hunter Pyle Law have worked the following hours in this case:

Name	Year Admitted	Hours	Rate	Amount
Hunter Pyle, Principal	1997	113.3	\$950	\$107,635.00
Andrea Núñez, Associate	2021	118.5	\$500	\$59,250.00
Bradán Litzinger, Associate	2022	9	\$400	\$3,600.00
Matthew Junker, Contract Attorney	2020	50	\$450	\$22,500.00
Kim Misenhimer, Paralegal	N/A	1.6	\$225	\$360.00
Darlene Sanchez, Paralegal	N/A	6.5	\$250	\$1,470.00
Totals:				\$194,815.00

(Pyle Decl., ¶ 71)

Class Counsel anticipates that they will spend an additional 15 hours in attorney time preparing for and appearing at the final approval hearing and conducting remaining Settlement administration tasks, including responding to questions from Settlement Class Members, and subsequent reporting to the administration of the Settlement. (Pyle Decl., ¶ 72.) Accordingly, ten additional hours for Ms. Núñez (\$5,000) and five additional hours for Mr. Pyle (\$4,750) increases Hunter Pyle Law's total estimated lodestar to \$204,565. (*Ibid.*)

1 Hunter Pyle Law's requested hourly rates are reasonable. While there is a scarcity of hourly
2 fee-paying plaintiffs in class action litigation, a California court provided some guidance in 1993
3 when it approved an hourly rate of \$450 for wage and hour class litigation in the absence of an
4 agreement by the client to pay fees on an hourly basis. (See *Bihun v. AT&T Info. Sys., Inc.* (1993) 13
5 Cal.App.4th 976, overruled on other grounds in *Lakin v. Watkins Assoc. Indus.* (1993) 6 Cal.4th 644,
6 664.) Similarly, in 2007, the Northern District of California found \$650 per hour to be a reasonable
7 hourly rate for an attorney admitted to the bar in June 1992 who had achieved success in multi-
8 plaintiff employment law cases. (*Aguilar v. Zep Inc.* (N.D. Cal., Aug. 15, 2014, No. 13-CV-00563-
9 WHO), 2014 WL 4063144.)

10 The skill and experience of Hunter Pyle Law also justify the requested rates. Class Counsel
11 have substantial experience in employment law actions, especially wage and hour class actions.
12 Hunter Pyle Law's practice is primarily devoted to litigating employment law violations, and many
13 of the firm's cases are wage and hour class actions. Hunter Pyle Law has represented employees in
14 numerous class action lawsuits involving wage and hour violations and has obtained favorable
15 settlements for employees. Class Counsel's experience in litigating employment wage and hour
16 matters was integral in evaluating the strengths and weaknesses of the case against Defendants and
17 negotiating a fair and reasonable settlement. (Pyle Decl., ¶¶ 6–20.)

18 Courts have regularly approved the hourly rates charged by Hunter Pyle Law. (E.g. *Kostyuk*
19 *v. Golden State Overnight Delivery Serv., Inc.* (Alameda Super. Ct., No. RG14727191); *Newcomb,*
20 *et al. v. J.B. Hunt Transp., Inc.* (Alameda Super. Ct., No. RG16815734); *Hooper v. URS Midwest,*
21 *Inc.* (San Bernardino Super. Ct., No. CIV DS1607489); *Brooks, et al. v. Chariot Transit, Inc.* (San
22 Francisco Super. Ct., No. CGC-16-554398); *Austin, et al. v. Foodliner, Inc.*, 4:16-cv-07185-HSG
23 (N.D. Cal.); *Castro, et al. v. ABM Indus., Inc., et al.*, 4:17-cv-03026-YGR (N.D. Cal.); *Winston, et*
24 *al. v. Comcast Spectacor Holding Co., LLC et al.* (Alameda Super. Ct., No. RG16815734, July 14,
25 2020) [approving Mr. Pyle's 2020 rate of \$795 and Ms. Fiester's 2020 rate of \$425]; *Olivera, et al.*
26 *v. C & B Delivery Serv., et al.* (Alameda Super. Ct., No. RG20062287, Sept. 14, 2021) [approving
27 Mr. Pyle's 2021 rate of \$850 and Ms. Fiester's 2021 rate of \$500]; *Lopez et al. v. First Student, Inc.*

1 *et al.*, 5-19-cv-01669-JGB-SHK (C.D. Cal.) [approving Mr. Pyle’s 2021 rate of \$850]; *Arenas v.*
2 *Kerry Inc.* (Alameda Super. Ct., No. RG20050886, Apr. 4, 2022) [approving Mr. Pyle’s 2022 rate of
3 \$875 and Mr. Chen’s 2022 rate of \$475]; *Sales, et al. v. United Road Services, Inc. et al.* (United
4 States District Court, Northern District of California, Case No. 4:19-cv-08404-JST) [approving Mr.
5 Pyle’s 2023 rate of \$900 and Ms. Núñez’s 2023 rate of \$450]; *Langlands et al. v. The Board of*
6 *Trustees of the Leland Stanford Junior Univ., et al.* (Alameda Super. Ct., No. 19CV343871)
7 [approving Mr. Pyle’s 2024 rate of \$975 and Ms. Núñez’s 2024 rate of \$475]; *Roper v. Golden State*
8 *Urgent Care Providers, et al.* (Santa Clara Super. Ct., No. 21CV386281, January 23, 2025)
9 [approving Mr. Pyle’s 2024 rate of \$925 and Ms. Fiester’s 2024 rate of \$575]; see also Pyle Decl.,
10 ¶¶ 10-11.)

11 Hunter Pyle Law applied its skill and experience in undertaking the substantial work to
12 obtain the class-wide Settlement. This included, among other things: conducting significant pre-suit
13 investigation; analyzing Plaintiff’s claims; drafting and amending pleadings; fact-intensive
14 interviews with Plaintiff and Class Members; preparing an informal discovery plan; extensive review
15 of documents to evaluate Plaintiff’s claims and assess potential damages and defenses; conducting a
16 damages analysis; active participation in settlement negotiations; substantial negotiation over a
17 memorandum of understanding, a long form settlement agreement and Class Notice, drafting
18 motions for preliminary and final approval, and overseeing the settlement administration process.
19 (See Pyle Decl., ¶ 73.)

20 **2. The Requested Fees Represent a Negative Multiplier**

21 After calculating the lodestar figure, the Court may enhance it with a “multiplier” to account
22 for a range of factors, such as the novelty and difficulty of the case, the contingent nature of the fee
23 award, and the results obtained. (*Serrano III, supra*, 20 Cal.3d at pp. 48–49; see also *Thayer v. Wells*
24 *Fargo Bank* (2001) 92 Cal.App.4th 819, 834 “[t]here is no . . . rule limiting the factors that may
25 justify an exercise of judicial discretion to [adjust the] lodestar”). Moreover, “such fee
26 enhancements are intended to compensate for the risk of loss generally in contingency cases as a
27
28

1 class.” (*Chodos v. Borman* (2014) 227 Cal.App.4th 76, 93.) Indeed, “[o]ne of the most common fee
2 enhancers . . . is for contingency risk.” (*Graham v. DaimlerChrysler* (2004) 34 Cal.4th 553, 579.)

3 Here, ss detailed above, the total lodestar is \$204,565. The requested fee of \$116,666.67 thus
4 builds in a so-called “negative multiplier” that is “presumptively reasonable.” (*Chun-Hoon v. McKee*
5 *Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 854 [multiplier of less than one “suggests that the
6 negotiated fee award is a reasonable and fair valuation of the services rendered to the class by class
7 counsel”]; accord *Covillo v. Specialtys Café* (N.D. Cal. Mar. 6, 2014, No. C-11-00594 DMR) 2014
8 WL 954516, at *7 [“Plaintiffs’ requested fee award is approximately 65% of the lodestar, which
9 means that the requested fee award results in a so-called negative multiplier, suggesting that the
10 percentage of the fund is reasonable and fair.”]; *In re Portal Software, Inc. Securities Litigation*
11 (N.D. Cal., Nov. 26, 2007, No. C-03-5138 VRW) 2007 WL 4171201, at *16.)

12 Furthermore, Class Counsel represented Plaintiff on a purely contingent fee basis. (Pyle
13 Decl., ¶ 74.) Unlike defense counsel, who are regularly paid a fair-market hourly rate, Class Counsel
14 have not received any attorney’s fees for the significant time they have spent prosecuting this case.
15 Class Counsel have also paid for all of the costs of litigation out of pocket. (*Ibid.*) Therefore, had
16 Defendants prevailed, Class Counsel would have lost both the time and litigation costs they spent on
17 this case.

18 In addition, Class Counsel displayed a high level of skill in prosecuting this case. As detailed
19 above, Class Counsel’s respective firms are highly skilled and experienced in employment and class
20 litigation. They deployed this skill and experience in investigating the claims, defenses, and risks of
21 this case, including the enormous risk in obtaining class certification. (Pyle Decl., ¶ 75.) Class
22 Members will benefit from the excellent result without having to wait through years of protracted
23 litigation.

24 **D. Litigation Costs**

25 Class Counsel’s litigation costs total \$20,448.04. (Pyle Decl., ¶ 48.) This is lower than the
26 \$25,000 allowed for in the Settlement. (Settlement, ¶ 4.3.) Defendants do not oppose reimbursement
27 of these costs. (*Ibid.*)

1 **E. The Requested Service Award Is Reasonable**

2 Courts routinely approve incentive awards to compensate named plaintiffs for the services
3 they provide and the risks they incur during class action litigation. (See, e.g., *In re Cellphone Fee*
4 *Termination Cases* (2010) 186 Cal.App.4th 1380 [approving incentive payments of \$10,000 each to
5 four class representatives]; *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
6 [upholding “service payments” to named plaintiffs]; *Van Vranken v. Atlantic Richfield Co.* (N.D.
7 Cal. 1995) 901 F.Supp. 294 [approving \$50,000 participation award].)

8 The criteria courts may consider in determining whether to make an incentive award include:
9 “1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the
10 notoriety and personal difficulties encountered by the class representative; 3) the amount of time and
11 effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit
12 (or lack thereof) enjoyed by the class representative as a result of the litigation.” (*Van Vranken*,
13 *supra*, 901 F.Supp. at p. 299.) Courts have recognized that assuming potentially career-damaging
14 risks for the vindication of the rights of fellow employees is a factor justifying a substantial
15 enhancement award. (See, e.g., *Roberts v. Texaco, Inc.* (S.D.N.Y. 1997) 979 F.Supp. 185, 201.)

16 Here, Plaintiff pursued this action to enforce California wage and hour laws. Plaintiff was
17 actively involved in this class action, including gathering documents, providing information, staying
18 up to date about the progress of the case, and helping Class Counsel understand Freemodel’s policies
19 and practices. policies (Dean Decl., ¶ 7.) In total, Plaintiff spent over 60 hours working on this case.
20 (See Dean Decl., ¶ 18.) She had at least 25 phone calls and Zoom meetings with Class Counsel over
21 the course of the litigation to provide information or be advised of the progress of the case. These
22 calls and meetings lasted for approximately 30-60 minutes. She also promptly answered numerous
23 emails from Class Counsel. (Dean Decl., ¶ 9.)

24 Plaintiff was also actively involved in helping Class Counsel prepare for mediation. (Dean
25 Decl., ¶ 10.) She answered questions about Freemodel’s pay policies and practices. (*Ibid.*) She also
26 provided information about Project Director duties. She spent approximately 35 hours helping to
27 prepare for the mediation. (*Ibid.*)

28

1 Plaintiff was actively involved with the settlement negotiations for the case. (Dean Decl., ¶
2 11.) She took time off of work to attend the mediation, which took place on Zoom, from Hunter Pyle
3 Law’s office. (*Ibid.*) The mediation took approximately 9 hours. She made herself available
4 whenever the Class Counsel requested it. (*Ibid.*)

5 Plaintiff carefully reviewed the Settlement Agreement before signing it and accepted
6 settlement only after much consideration and in the spirit of fairness. (Dean Decl., ¶ 12.)

7 In agreeing to be a Class Representative, Plaintiff undertook risks regarding her future
8 employment. (See *Covillo v. Specialtys Cafe* (N.D. Cal., Mar. 6, 2014, No. C-11-00594 DMR) 2014
9 WL 954516, at *8 [incentive award particularly appropriate where plaintiff undertakes “reputational
10 risk” in bringing action against employer]; see Pyle Decl., ¶ 47; Dean Decl., ¶ 8.) Any potential
11 future employer who runs a background check on Plaintiff will discover they sued their employer.
12 (Pyle Decl., ¶ 47.)

13 As part of the Settlement, Plaintiff agreed to a general release of claims. (Settlement, ¶ 2.9.)
14 Plaintiff believes that Defendants committed several wage and hour violations against her and other
15 employees. However, as a result of signing the general release in the Settlement, she is giving up her
16 right to pursue any and all claims she could have brought against Defendants. (*Ibid.*; see Dean Decl.,
17 ¶ 13.)

18 Finally, Plaintiff’s initiative and involvement have furthered California’s public policies,
19 including providing employees with proper overtime compensation. (See *Alvarado v. Dart*
20 *Container Corp. of Cal.* (2018) 4 Cal.5th 542, 552, 562 [recognizing “California has a longstanding
21 policy of discouraging employers from imposing overtime work” and that “in deciding how to factor
22 a flat sum bonus into an employee’s overtime pay rate, we are obligated to prefer an interpretation
23 that discourages employers from imposing overtime work”].)

24 Accordingly, the Court should grant the Service Award. Plaintiff has played an integral role
25 in this Action that has achieved an excellent result for her fellow workers. The Service Awards fairly
26 compensate her for her initiation of the Action, her time and effort throughout, the personal risk she
27 incurred, the general release she provided, and her services in furthering California public policy.
28

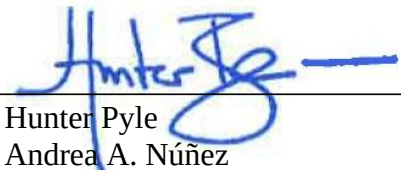
1 **VII. CONCLUSION**

2 The arm's-length Settlement of this matter avoids significant litigation risk and provides for a
3 substantial monetary distribution to Settlement Class Members. For these reasons, the Parties
4 respectfully request that the Court enter an order:

- 5 1. Approving the proposed Stipulation of Settlement;
- 6 2. Certifying, for settlement purposes only, the proposed Settlement Class defined as: all
7 individuals who entered into Project Director Agreements with Freemodel, Inc.
8 and/or worked as Project Directors for Freemodel, Inc. in California between July 14,
9 2019, and the date of preliminary approval of the parties' settlement agreement by the
10 Court;
- 11 3. Appointing Julie Dean as Class Representative;
- 12 4. Appointing Hunter Pyle and Andrea A. Núñez of Hunter Pyle Law as Class Counsel;
- 13 5. Appointing Apex Class Action as the third-party Claims Administrator;
- 14 6. Approving Legal Aid at Work as the *cy pres* beneficiary; and
- 15 7. Approving a Class Counsel Award of \$116,666.67 in attorneys' fees and \$20,448.04
16 in litigation costs; and
- 17 8. Approving a Class Representative Service Award of \$5,000 for Plaintiff Julie Dean.

18
19 Respectfully submitted,

20 HUNTER PYLE LAW, PC

21
22 By:  _____

23 Hunter Pyle
Andrea A. Núñez

24 Attorneys for Plaintiff Julie Dean
25 and the Putative Class
26
27
28