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Individually, on behalf of others similarly situated,
and on behalf of Aggrieved Employees pursuant to the
California Private Attorneys General Act*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JESSE ROMERO, individually and on behalf of
others similarly situated,

Plaintiff,

vs.

CALIFORNIA CLOSET COMPANY, a
California corporation; CAL CLOSET RETAIL,
INC., a Delaware corporation; and DOES 1
through 25, inclusive,

Defendants.

Case No. 23STCV27355

Hon. Samantha Jessner, Dept. 7

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT, ATTORNEYS'
FEES AND COSTS, ENHANCEMENT
PAYMENT, AND SETTLEMENT
ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: June 5, 2025

Time: 10:00 a.m.

Dept: 7

Complaint Filed: November 7, 2023

FAC Filed: October 10, 2024

Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on **June 5, 2025 at 10:00 a.m.** in Department 7 of the
3 above-captioned Court located at 312 N. Spring Street, Los Angeles, California 90012, pursuant to
4 California Code of Civil Procedure section 382, Rule 3.769 of the California Rules of Court, and
5 California Labor Code section 2699(l), Plaintiff Jesse Romero (“Plaintiff”) will and hereby does move
6 the Court for an Order granting final approval of the proposed class action and Labor Code Private
7 Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) settlement
8 between Plaintiff and Defendants California Closet Company, Inc. and Cal Closets Retail, Inc.
9 (“Defendants”).

10 Plaintiff requests that the Court enter an Order:

- 11 1. Granting final approval of the class action and PAGA settlement;
- 12 2. Approving the settlement as fair, adequate, and reasonable, based upon the terms as set
13 forth in the Court-approved Joint Stipulation of Class Action and PAGA Settlement (“Settlement
14 Agreement” or “Settlement”), including payment by Defendants of the Gross Fund Value of One
15 million seven hundred and ninety-four thousand dollars and zero cents (\$1,794,000.00) equal to the
16 amounts to pay (1) the Settlement Class Members and PAGA Employees pursuant to the terms of the
17 Settlement; (2) the Court-approved Attorneys’ Fees and Costs; (3) the Court-approved Enhancement
18 Payment; (4) the Court-approved Settlement Administration Costs; and (5) the Court-approved
19 payment to the California Labor and Workforce Development Agency (“LWDA”) pursuant to PAGA;
- 20 3. Approving Class Counsel’s request for one-third (33.33%) of the Gross Fund Value,
21 i.e., \$597,999.40 in attorneys’ fees, plus reimbursement of actual costs and expenses in the amount of
22 Twenty-three thousand dollars and zero cents (\$23,000.00);
- 23 4. Approving the Enhancement Payment to Plaintiff in the amount of Seven thousand five
24 hundred dollars and zero cents (\$7,500.00) in recognition of his services to the Class Members;
- 25 5. Approving the Settlement Administration Costs to Apex Class Action, LLC in the
26 amount of Ten thousand nine hundred and ninety dollars and zero cents (\$10,990.00); and
- 27 8. Approving One hundred thirty-four thousand, five hundred and fifty dollars and zero
28 cents (\$134,550.00) to be paid to the LWDA as seventy-five percent (75%) of the one hundred and

1 seventy-nine thousand five hundred and zero cents (\$179,400.00) allocated to civil penalties under
2 PAGA.

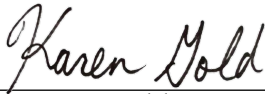
3 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of
4 Court, which require approval by the Court of a class action settlement and permit the Court to extend
5 the page limit for memoranda.

6 This Motion is based on the following Memorandum of Points and Authorities, the Settlement
7 Agreement, the Declaration of Class Counsel (Karen I. Gold), the Class Representative (Jesse
8 Romero), and the Settlement Administrator (Madely Nava on behalf of Apex Class Action, LLC), the
9 pleadings and other records on file with the Court in this matter, and such evidence or oral argument
10 as may be presented at the hearing on this Motion.

11 Respectfully submitted,

12 Dated: May 13, 2025

BLACKSTONE LAW, APC

13 By: 
14 Karen I. Gold
15 Sara Pezeshkpour
16 Noam Reiffman
17 Marissa Mayhood

18 Attorneys for Plaintiff JESSE ROMERO,
19 Individually, on behalf of others similarly situated,
20 and on behalf of Aggrieved Employees pursuant to the
21 California Private Attorneys General Act
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3	<i>Parker v. Los Angeles</i> , 44 Cal.App.3d 556 (1974)	17
4	<i>Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.</i> , 323 F. Supp. 364	
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jesse Romero (“Plaintiff” or “Class Representative”) seeks final approval of the class
4 action settlement reached with Defendants California Closet Company, Inc. and Cal Closets Retail,
5 Inc. (“Defendants”). Subject to Court approval, Plaintiff and Defendants (together, the “Parties”) have
6 settled the Class Released Claims and PAGA Released Claims as defined in the Joint Stipulation of
7 Class Action and PAGA Settlement (“Settlement Agreement” or “Settlement”) for a total amount of
8 One million seven hundred and ninety-four thousand dollars and zero cents (\$1,794,000.00) (“Gross
9 Fund Value”). (See Declaration of Karen I. Gold in Support of Plaintiff’s Motion for Final Approval
10 of Class Action and PAGA Settlement [“Gold Decl.”], ¶ 27, Exh. 5).

11 The Court conditionally certified, for settlement purposes only, the Class defined as: “All
12 current and former hourly-paid and/or non-exempt employees who worked for Defendants within the
13 State of California at any time during the Class Period” (“Class” or “Class Members”). (Gold Decl.,
14 Exh. 2, Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement
15 Agreement”), ¶ 12b). The “Class Period” is defined as the period from November 7, 2019, through
16 January 29, 2025 with regard to defendant California Closet Company, and January 1, 2022 through
17 January 29, 2025 with regard to defendant Cal Closets Retail, Inc. (Gold Decl., Exh. 5, First
18 Amendment to Class Action and PAGA Settlement Agreement and Class Notice, ¶ 66). The
19 “Settlement Class Members” consist of all Class Members who did not submit a valid and timely
20 Request for Exclusion. (Gold Decl., Exh. 2, Settlement Agreement, ¶ 12II). The “Aggrieved
21 Employees” consist of “all current and former hourly-paid and/or non-exempt employees who worked
22 for Defendants in the State of California at any time during the PAGA Period.” (Gold Decl., Exh. 2,
23 Settlement Agreement, ¶ 12x). The “PAGA Period” is defined as the period from October 24, 2022
24 to January 30, 2025. (Gold Decl., Exh. 5, First Amendment to Class Action and PAGA Settlement
25 Agreement and Class Notice, ¶ 66).

26 As discussed in Plaintiff’s Motion for Preliminary Approval, the proposed Settlement satisfies
27 all the criteria for final settlement approval under California law because it is fair, adequate, and
28 reasonable. (Gold Decl., Exh. 3 pps. 10:26-16:2; See also, *Kullar v. Foot Locker Retail, Inc.* (2008)

1 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801). The
2 response of the Class to the Settlement confirms that final settlement approval is appropriate. ***There***
3 ***have been no objections to and no requests to opt-out from the Class Settlement.*** (Declaration of
4 Madely Nava of Apex Class Action, LLC, in Support of Motion for Final Approval of Class Action
5 and PAGA Settlement, Attorneys’ Fees and Costs, Enhancement Payment, and Settlement
6 Administration Costs [“Nava Decl.”], ¶¶ 12-15).

7 Because the Settlement achieves outstanding results for the Settlement Class Members, the
8 Aggrieved Employees, and the State of California, Plaintiff respectfully requests, on behalf of the
9 Class and without opposition from Defendant, that the Court approve the Settlement as fair, adequate,
10 and reasonable, and enter judgment in accordance with the Settlement’s terms.

11 Plaintiff seeks the Court’s approval of an attorneys’ fee award of one-third (33.33%) of the
12 Gross Fund Value, equaling Five hundred ninety-seven thousand, nine hundred ninety-nine dollars
13 and forty cents (\$597,999.40), plus reimbursement of in actual litigation costs and expenses in the
14 amount of Twenty-three thousand dollars and zero cents (\$23,000.00), (together, “Attorneys’ Fees and
15 Costs”). Class Counsel’s request for an award of attorneys’ fees and costs is reasonable and
16 appropriate in light of the outstanding work performed by Class Counsel in the matter, the contingent
17 nature of this action, and the results achieved under the Settlement. (*See Lealao v. Beneficial*
18 *California, Inc.* (2000) 82 Cal.App.4th 19).

19 Plaintiff also requests the Court to confirm the amount to be paid to Plaintiff in the amount of
20 Seven thousand five hundred dollars and zero cents (\$7,500.00) (“Enhancement Payment”) for his
21 services on behalf of the Class. This amount proposed to be awarded to Plaintiff is fair and reasonable
22 for the reasons Plaintiff provided in his declaration. (*See Declaration of Plaintiff Jesse Romero in*
23 *Support of Motion for Final Approval of Class Action and PAGA Settlement, Attorneys’ Fees and*
24 *Costs, Enhancement Payment, and Settlement Administration Costs [“Romero Decl.”] filed*
25 *concurrently herewith*). Courts approve incentive awards to plaintiffs when justified and appropriate
26 to compensate plaintiffs for their time, effort, and inconvenience. (*See e.g., Van Vranken v. Atlantic*
27 *Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299).

1 Finally, Plaintiff requests that the Court approve the payment of Ten thousand nine hundred
2 and ninety dollars and zero cents (\$10,990.00) (“Settlement Administration Costs”) to Apex Class
3 Action, LLC (“Apex” or “Settlement Administrator”) as compensation for its administration services
4 it has and will provide in connection with the Settlement. (*See, generally*, Nava Decl.).

5 In order to efficiently present the Court with adequate information to determine whether to
6 grant final approval of the Settlement and award the Attorneys’ Fees and Costs, Enhancement
7 Payment, and Settlement Administration Costs, Plaintiff also moves for an order permitting the filing
8 of this single consolidated memorandum, although it exceeds the page limit established by California
9 Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

10 II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

11 Defendants design and build custom closets, entertainment centers, and kitchen pantries.
12 Plaintiff was employed by Defendants as an hourly-paid, non-exempt installer from approximately
13 September 2021 to November 2022. (Romero Decl., ¶ 2). Defendants jointly and severally employed
14 Plaintiff at their location in Inglewood, California. (*Id.*). Defendants deny that they were joint
15 employers. Plaintiff’s job duties included, among other things, installing closets at clients’ locations.
16 (*Id.*).

17 On December 10, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action and
18 PAGA Settlement (“Motion for Preliminary Approval”). (Gold Decl., ¶ 24, Exh. 3). On January 30,
19 2025, the Court entered the Order Granting Preliminary Approval of Class Action and PAGA
20 Settlement (“Preliminary Approval Order”), thereby preliminary approving the terms of the Settlement
21 Agreement, the Notice of Class Action Settlement (“Class Notice”), and the proposed administration
22 procedures and associated deadlines. (*Id.*, ¶ 25 & Exh. 4).

23 The Parties agree that the Class described herein may be certified for settlement purposes only.
24 If for any reason the Settlement is not approved, the certification will have no force or effect and will
25 immediately be revoked. The Parties further agree that certification for purposes of approving the
26 Settlement Agreement is in no way an admission that class certification is proper under the more
27 stringent standard applied for litigation and that evidence of this limited stipulation for settlement
28 purposes only will not be admissible for any purpose in this or any other proceeding.

1 **III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION**

2 The Parties have agreed to settle the class and PAGA claims at issue in the Action for a non-
3 reversionary Gross Fund Value of One million seven hundred and ninety-four thousand dollars and
4 zero cents (\$1,794,000.00), exclusive of employer-side payroll taxes. (Gold Decl., Exh. 5, First
5 Amendment to Class Action and PAGA Settlement Agreement and Class Notice, ¶ 66). The Gross
6 Fund Value includes: (1) Class Counsel’s fees in the amount of up to one-third (33.33%) of the Gross
7 Fund Value (i.e., \$597,999.40); (2) Class Counsel’s actual litigation costs and expenses of Twenty-
8 three thousand dollars and zero cents (\$23,000.00); (3) Settlement Administration Costs of Ten
9 thousand nine hundred and ninety dollars and zero cents (\$10,990.00); (4) Enhancement Payment in
10 the amount of seven thousand five hundred dollars and zero cents (\$7,500.00); and (5) PAGA Payment
11 of One hundred and seventy-nine thousand four hundred and zero cents (\$179,400.00) (*Id.*) After the
12 above Court-approved amounts are deducted from the Gross Fund Value, the Settlement Class
13 Members will share in a Net Settlement Amount of approximately nine hundred and seventy-five
14 thousand one hundred ten dollars and sixty cents (\$975,110.60). (Nava Decl., ¶ 16).

15 The Settlement Agreement does not require Settlement Class Members to submit claims as a
16 prerequisite to receiving their *pro rata* share of the Net Settlement Amount. Rather, the Net Settlement
17 Amount will be distributed and paid to all Class Members who do not submit a timely and valid
18 Request for Exclusion (“Settlement Class Members”) on a *pro rata* basis based on the number of
19 weeks each Class Member worked for Defendants as an hourly-paid and/or non-exempt employee in
20 California during the Class Period (“Workweeks”). (Gold Decl., Exh. 2, Settlement Agreement, ¶¶
21 12(u), 12(ll), 12(mm), 20). In order to be counted as a Workweek, the Class Member must have worked
22 at least one shift in a given week. (Gold Decl., Exh. 2, Settlement Agreement, ¶ 12(mm)). The *pro*
23 *rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the
24 Class Settlement (“Individual Settlement Share”) will be calculated by the Settlement Administrator
25 in accordance with the Settlement Agreement. (Gold Decl., Exh. 2, Settlement Agreement, ¶¶ 12(r),
26 20(b)).

27 The Settlement Agreement also does not require Aggrieved Employees to submit claims as a
28 prerequisite to receiving their *pro rata* share of twenty-five percent (25%) of the PAGA Amount. The

1 PAGA Employee Amount will be distributed and paid to all Aggrieved Employees on a *pro rata* basis
2 based on the number of weeks each Aggrieved Employee worked for Defendant as an hourly-paid
3 and/or non-exempt employee in California during the PAGA Period (“PAGA Workweeks”). (Gold
4 Decl., Exh. 2, Settlement Agreement, ¶¶ 12(q), 21). In order to be counted as a PAGA Workweek, the
5 Aggrieved Employee must have worked at least one shift in a given week. (Gold Decl., Exh. 2,
6 Settlement Agreement, ¶ 12(bb)). The *pro rata* share of the PAGA Employee Amount that an
7 Aggrieved Employee may be eligible to receive under the PAGA Settlement (“Individual PAGA
8 Payment”) will be calculated by the Settlement Administrator in accordance with the Settlement
9 Agreement. (Gold Decl., Exh. 2, Settlement Agreement, ¶ 21).

10 Each Individual Settlement Share will be allocated as twenty-five percent (25%) wages and
11 seventy-five percent (75%) non-wage damages and penalties. (Gold Decl., Exh. 2, Settlement
12 Agreement, ¶ 22). The portion allocated to wages will be reported on an IRS Form W-2 and the
13 portions allocated to non-wage damages and penalties will be reported on an IRS Form 1099 (if
14 applicable) by the Settlement Administrator. (Gold Decl., Exh. 2, Settlement Agreement, ¶ 22). The
15 Settlement Administrator will withhold the employee’s share of taxes and withholdings with respect
16 to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class
17 Members for their Individual Settlement Share (“Individual Settlement Payment”). (Gold Decl., Exh.
18 2, Settlement Agreement, ¶¶ 22). The employer’s share of taxes and contributions in connection with
19 the wages portion of Individual Settlement Shares (the “Employer Taxes”) will be paid by Defendants
20 to the proper taxing authorities separately and in addition to the Gross Fund Value. (Gold Decl., Exh.
21 2, Settlement Agreement, ¶¶ 12(k), 22). Each Individual PAGA Payment will be allocated as one
22 hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the
23 Settlement Administrator. (Gold Decl., Exh. 2, Settlement Agreement, ¶ 22).

24 Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
25 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
26 thereafter, shall be canceled. (Gold Decl., Exh. 2, Settlement Agreement, ¶ 39). Any funds associated
27 with such canceled checks will be distributed by the Settlement Administrator to the State of
28

1 California's Unclaimed Property Fund in the name of the Settlement Class Member and/or Aggrieved
2 Employee. (Gold Decl., Exh. 2, Settlement Agreement, ¶ 39).

3 Upon the full funding of the Gross Fund Value, Plaintiff and all Settlement Class Members
4 will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and
5 discharged the Released Parties of all Class Released Claims. (Gold Decl., Exh. 2, Settlement
6 Agreement, ¶ 40). "Class Released Claims" means all claims that were alleged, or reasonably could
7 have been alleged based on the factual allegations contained in the Operative Complaint, including,
8 but not limited to, California Labor Code sections 201, 202, 203, 204, 210, 213, 216, 218.5, 218.6,
9 223, 225.5, 226, 226.3, 226.6, 226.7, 227.3, 233, 245, 245.5, 246, 246.5, 247, 247.5, 248.1, 248.2,
10 249, 256, 510, 511, 512, 551, 558, 558.1, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199,
11 2800, 2802, California Industrial Commission Wage Orders, and including all claims related to
12 alleged: (1) Minimum Wage and Straight Time Violations; (2) Overtime Wage Violations; (3) Unpaid
13 Vacation and Holiday Wages; (4) Meal Period Violations; (5) Rest Period Violations; (6) Failure to
14 Timely Pay Wages During Employment; (7) Failure to Provide Accurate Wage Statements, Maintain
15 Required Records, and Recordkeeping Violations; (8) Failure to Pay All Wages Earned and Unpaid
16 at Separation; (9) Improper Payment of Final Wages; (10) Failure to Reimburse Business Expenses;
17 (11) Failure to Provide Sick Leave and Notice of Entitlement to Sick Leave; and (12) Unfair
18 Competition. This further includes any and all other claims under California common law, the
19 California Labor Code, and the California Business and Professions Code alleged in or that could have
20 been alleged under the facts, allegations and/or claims pleaded in the action. This expressly excludes
21 PAGA Released Claims, which are separately released below (*Id.*, at ¶ 12(ee)).

22 Upon the full funding of the Gross Fund Value, Plaintiff, the State of California with respect
23 to all Aggrieved Employees, and all Aggrieved Employees will be deemed to have fully, finally, and
24 forever released, settled, compromised, relinquished, and discharged the Released Parties of all PAGA
25 Released Claims. (*Id.*, ¶ 41).

26 "PAGA Released Claims" means upon Defendant's fulfillment of its payment obligations of
27 this Agreement, in exchange for the consideration provided by this Agreement, Plaintiff, the State of
28 California, the LWDA, the Aggrieved Employees and their respective former and present

1 representatives, agents, attorneys, heirs, administrators, successors, and assigns and any other
2 representative, proxy, or agent thereof shall release the Released Parties from all claims made or which
3 could have been made for civil penalties under the PAGA, Labor Code section 2698, et seq., based on
4 the facts pled in Plaintiff's letters to the LWDA (including his initial letter to the LWDA and the
5 amended letter discussed above) and the Operative Complaint, from October 24, 2022 to the date of
6 the Court's order granting Preliminary Approval of the settlement including, but not limited to, any
7 and all claims for PAGA penalties involving any allegations that Defendants failed to pay all wages
8 due (including minimum wages, regular wages, sick pay, vacation pay, holiday pay, paid time off and
9 overtime wages or double time wages); failed to provide legally-compliant meal and rest breaks and
10 failed to pay premium pay for missed, late, interrupted or short meal and rest breaks; failed to timely
11 pay all earned wages and compensation; failed to timely pay wages during employment; improper
12 payment of final wages; failure to provide sick leave and notice of entitlement to sick leave; failed to
13 reimburse necessary business expenses; failed to provide timely final pay; failed to maintain required
14 records; recordkeeping violations; failed to properly pay sick pay and vacation time; failed to provide
15 accurate itemized wage statement, as well as any claims under the California Labor Code for violations
16 of Labor Code sections 201, 202, 203, 204, 210, 213, 216, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.6,
17 226.7, 227.3, 233, 245, 245.5, 246, 246.5, 247, 247.5, 248.1, 248.2, 249, 256, 510, 511, 512, 551, 558,
18 558.1, 1174, 1174.5, 1185, 1194, 1197, 1197.1, 1198, 1199, 2800, 2802, and applicable IWC Wage
19 Orders, and California Code of Regulations, Title 8, Section 11000 et seq. The Aggrieved Employees
20 shall release their PAGA claims, to the extent they have any interest, in their entirety and may not opt
21 out of the PAGA Released Claims. (*Id.*, at ¶ 12(ff)).

22 Upon the full funding of the Gross Fund Value, Plaintiff, individually and on his own behalf,
23 will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and
24 discharged the Released Parties from any and all claims, debts, liabilities, demands, obligations,
25 guarantees, costs, expenses, attorneys' fees, damages, or causes of action of any kind or nature
26 whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, which Plaintiff, at
27 any time of execution of this Settlement Agreement, had or claimed to have or may have, including,
28 but not limited to, any and all claims arising out of, relating to, or resulting from his employment

1 and/or separation of employment with the Released Parties, including any claims arising under any
2 federal, state, or local law, statute, ordinance, rule, or regulation or Executive Order relating to
3 employment, including, but in no way limited to, any claim under Title VII of the Civil Rights Act of
4 1964, as amended, 42 U.S.C. § 1981; the Americans with Disabilities Act; the Family and Medical
5 Leave Act; the Employee Retirement Income Security Act; the California Family Rights Act; the
6 California Fair Employment and Housing Act; all claims for wages or penalties under the Fair Labor
7 Standards Act; all claims for wages or penalties under the California Labor Code; Business and
8 Professions Code sections 17200 *et seq.*; all laws relating to violation of public policy, retaliation, or
9 interference with legal rights; any and all other employment or discrimination laws; whistleblower
10 claims; any tort, fraud, or constitutional claims; and any breach of contract claims or claims of
11 promissory estoppel. It is agreed that this is a general release and is to be broadly construed as a release
12 of all claims, provided that, notwithstanding the foregoing, this Paragraph expressly does not include
13 a release of any claims that cannot be released hereunder by law. Plaintiff understands and expressly
14 agrees that this Settlement Agreement extends to claims that he has against Defendants, of whatever
15 nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present, or
16 future, arising from or attributable to an incident or event, occurring in whole or in part, on or before
17 the execution of this Settlement Agreement. Any and all rights granted under any state or federal law
18 or regulation limiting the effect of this Settlement Agreement, including the provisions of Section
19 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED. Section 1542 of the
20 California Civil Code reads as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
22 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
23 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
24 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
25 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
26 PARTY.

(Gold Decl., Exh. 2, Settlement Agreement, ¶ 42).

26 The “Released Parties” means (i) Defendants; (ii) each of Defendants’ past, present, and future
27 direct and indirect parents; (iii) the respective past, present, and future direct and indirect subsidiaries
28 and affiliates of any of the foregoing; (iv) the past, present, and future shareholders, directors, officers,
agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants,

representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the foregoing; and (v) any individual or entity which could be jointly liable with any of the foregoing. (*Id.*, ¶ 12gg).

IV. THE SETTLEMENT ADMINISTRATION PROCESS

Apex has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Preliminary Approval Order.

On March 3, 2025, Apex received the class data file from Defendant's counsel, which contained the full name, Social Security number, last known mailing address, telephone number, and total number of relevant Workweeks worked by each Settlement Class Member (collectively, "Class List"). (Nava Decl., ¶ 5). The Class List was uploaded to Apex's database and checked for duplicates and other possible discrepancies. (*Ibid.*). The Class List contained 669 individuals identified as Class Members who worked 55,679 Workweeks during the Class Period and 564 individuals identified as Aggrieved Employees who worked a total of 20,587 PAGA Workweeks during the PAGA Period. (*Id.*, at ¶¶15, 19).

On March 7, 2025, Apex received and formatted the Court approved text for the Class Notice from Class Counsel. (Nava Decl., ¶ 6).

As part of the preparation for mailing, all 669 names and addresses contained in the Class List were then processed against the National Change of Address ("NCOA") database, maintained by the United States Postal Service ("USPS"), for purposes of updating and confirming the mailing addresses of the Class Members before mailing of the Class Notice. (*Id.*, ¶ 7). The NCOA contains requested change of addresses filed with the USPS. (*Ibid.*). To the extent that an updated address was found in the NCOA database, the updated address was used for the mailing of the Class Notice. (*Ibid.*). To the extent that no updated address was found in the NCOA database, the original address provided by Defendant's counsel was used for the mailing of the Class Notice. (*Ibid.*).

On March 10, 2025, the Class Notice was mailed, via U.S. First Class Mail, to all 669 individuals contained in the Class List. (*Id.*, ¶ 8). **Twenty (20)** Class Notices were returned to Apex as undeliverable. (*Id.*, ¶ 9). Apex performed a computerized skip trace on the twenty (20) returned Class Notices that did not have a forwarding address in an effort to obtain an updated address for the purpose of re-mailing the Class Notice. (*Ibid.*). As a result of this skip trace, **fifteen (15)** updated

addresses were obtained and the Class Notice was promptly re-mailed to those Class Members, via U.S First Class Mail. (Ibid). A total of **15** Class Notices were re-mailed. (Ibid). Specifically, **15** were re-mailed as a result of ILYM’s skip tracing efforts. (Ibid). As of the date of this declaration, a total of **five (5)** Class Notices have been deemed undeliverable. (*Id.*, at ¶ 11). Specifically, **5** Class Notices have been deemed undeliverable as no updated address was found notwithstanding the skip tracing. (Ibid).

Class Members had forty-five (45) calendar days after the Settlement Administrator mailed the Class Notices to submit a Request for Exclusion, Notice of Objection, and/or Workweeks Dispute (“Response Deadline”). (Gold Decl., Exh. 2, Settlement Agreement, ¶ 12(ii)). The Response Deadline was April 24, 2025. (Nava Decl., ¶¶ 12-14). The Settlement Administrator did not receive any Requests for Exclusion, Notice of Objections, and/or Workweeks Disputes. (Ibid).

The estimated average gross Individual Settlement Share is **\$1,457.56**, the estimated highest gross Individual Settlement Share is **\$4,728.53** and the estimated lowest gross Individual Settlement Share is **\$17.51**; the estimated average Individual PAGA Payment is **\$79.52**, the estimated highest Individual PAGA Payment is **\$135.07**, and the estimated lowest Individual PAGA Payment is **\$2.18**. (*Id.*, ¶¶ 18, 20).

V. COMPLIANCE WITH PROCEDURAL REQUIREMENTS OF PAGA

On December 10, 2024, Class Counsel submitted a copy of the Settlement Agreement to the LWDA through its online submission portal in compliance with California Labor Code § 2699(1)(2). (Gold Decl., ¶ 23). The LWDA has not objected or otherwise responded to the submissions. (Ibid).

VI. EVALUATION OF SETTLEMENT FOR FINAL APPROVAL

A. The Legal Standard for Final Approval

Before granting final approval of a class action settlement, the Court must review the settlement for fairness. (Cal. Rules of Court, rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801). A court must take into account relevant factors, including, for example, the strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, and the reaction of the class members to the proposed settlement.

(*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45; *Dunk*, 48 Cal.App.4th at 1801 [“The list of factors is not exhaustive and should be tailored to each case”]; *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625). Considering such factors, a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Wershba*, 91 Cal.App.4th at 245; *Dunk*, 48 Cal.App.4th at 1802). “The settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits. [The trial court is not] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.” (*Officers for Justice, supra*, 688 F.2d at 625).

B. The Settlement Should be Finally Approved

California courts recognize that “a presumption of fairness exists where . . . [a] settlement is reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations were at all times made at arm’s-length and were adversarial. (Gold Decl., ¶ 28). The Parties engaged in extensive informal discovery prior to reaching a settlement at the mediation. (*Id.*, ¶ 29).

C. The Settlement is Fair and Reasonable

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation, Defendants produced time and pay records for all putative Class Members for the period of November 7, 2019, through June 14, 2024. (Gold Decl., ¶ 29). Defendants also produced their Team Member Handbook and Employee Handbook, which detail Defendants’ employment policies and practices. (Gold Decl., ¶ 29). Thus, the voluminous and detailed records produced by Defendants allowed Class Counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims and the potential class-wide damages. (*Ibid.*). Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

1 Based on the information exchanged, the Parties extensively briefed issues regarding class
2 certification and liability and provided their analyses to the mediator who helped the Parties debate
3 the strengths and weakness of their respective positions. (Gold Decl., ¶ 31). At all times, Plaintiff
4 was willing and prepared to litigate this matter through class certification and trial if the Parties had
5 been unable to reach a favorable resolution. (Ibid). Additionally, settlement negotiations were
6 conducted by highly capable and experienced counsel. (Ibid). Class Counsel are respected members
7 of the California State Bar with strong records of vigorous and effective advocacy and are experienced
8 in handling complex wage and hour class action litigation. (Gold Decl., ¶¶ 2-16). Accordingly, Class
9 Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

10 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
11 trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.
12 (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court
13 must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
14 further litigation, the risk of maintaining class action status through trial, the amount offered in
15 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
16 views of counsel, the presence of a governmental participant, and the reaction of the class members to
17 the proposed settlement.” (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).

18 Here, the reasonableness of the Settlement is underscored by the fact that Defendants have
19 legal and factual grounds for defending the Action. Based upon Class Counsel’s experience litigating
20 similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class
21 certification and the merits of the Action absent a settlement. See also Exhibit 3 to Gold Decl., at pp.
22 10:26-16:2.

23 Class Counsel is aware of Defendants’ defenses and arguments and have also taken into
24 account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
25 inherent in such litigation, including those involved in class and/or representative adjudication. (Gold
26 Decl., ¶ 33). Plaintiff further recognizes the burdens of proof necessary to establish liability for the
27 claims asserted in the Action, Defendants’ defenses, and the difficulties in establishing entitlement to
28 monetary recovery. (Ibid). Plaintiff has also considered the Parties’ settlement discussions, as well

1 as the evaluations of the mediator, who is experienced and well-regarded in complex labor and
2 employment matters. (Ibid).

3 Defendants denied and continue to deny any liability and wrongdoing of any kind associated
4 with the claims alleged in the Action, and further deny that class certification is appropriate for any
5 purpose other than the Settlement. (*Id.*, ¶ 34). Defendants believe that they would ultimately prevail
6 in the Action. (Ibid). Defendants proffered defenses to both certification and to the merits of
7 Plaintiff's claims. (Ibid). Defendants contended that Plaintiff's claims are not suitable for class
8 certification because individual issues would predominate should this case go to trial. (Ibid). As with
9 all class actions, these complex cases raise difficult management and proof issues and, accordingly,
10 there is a significant risk that the Court may deny class certification. (Ibid).

11 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
12 amount of wages due to each Class Member would be an expensive, time-consuming, and extremely
13 uncertain proposition. (*Id.*, ¶ 35). In order to prove liability and damages, my office would need to
14 request and analyze hundreds of pages of documents, obtain the Class Members' contact information,
15 contact them, and obtain declarations. (Ibid). Plaintiff also faced the very real risk that Defendants
16 would engage in settlements with current and former employees using the "Pickup Stix" procedure.
17 (Ibid). Obtaining the cooperation of current employees would also be difficult, given the likely
18 reluctance to aid prosecution of a lawsuit against a current employer. (Ibid). On the other hand,
19 Defendants would likely be able to obtain the cooperation of their employees. (Ibid). Moreover, even
20 if Plaintiff prevailed at class certification and trial, possible appeals would substantially delay any
21 recovery by the Class. (Ibid).

22 In light of the Parties' respective legal positions and the risks of continued litigation, the Gross
23 Fund Value for resolution of the Class and PAGA claims, is fair, adequate, and reasonable. (*Id.*, ¶ 38).

24 **VII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**
25 **AND SHOULD BE APPROVED**

26 Class Counsel seeks one-third (33.33%) of the Gross Fund Value (*i.e.*, \$597,999.40) for fees
27 for the time spent litigating this matter and reimbursement of actual costs and expenses totaling
28 Twenty-three thousand dollars and zero cents (\$23,000.00) incurred in the prosecution of the Action.

(Gold Decl., ¶ 39). The requested fees and costs are fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits achieved by Class Counsel for the Class Members. (Ibid).

**A. Plaintiff's Fee Request of One-Third (1/3) of the Gross Fund Value
is Proper Under the Common Fund Doctrine**

Courts have long recognized the “common fund” or “common benefit” doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund. (*See Serrano v. Priest* (“*Serrano III*”) (1977) 20 Cal.3d 25, 34, quoting *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees’ Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gernert* (1980) 444 U.S. 472, 478; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 391-392).

The California Supreme Court has held that, “when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys’ fees out of the fund.” (*Serrano III, supra*, 20 Cal.3d at 34, quoting *D’Amico*, 11 Cal.3d 1; *see also Boeing, supra*, 444 U.S. at 478 (“[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Mills, supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common fund approach in class actions)). California Practice Guide: Civil Trials and Evidence (The Rutter Group) at § 17:172.3 explains the common fund doctrine as follows:

Where the lawsuit results in the recovery of a fund or property benefiting others as well as plaintiff (e.g., a class action), the court has inherent equitable power to order plaintiffs attorney fees paid out of the common fund or property [citations]. Such fee spreading assures that all of those benefited by the litigation pay their fair share of obtaining the recovery.

The percentage-of-the-fund approach appears to be the preferred method of awarding fees in traditional common fund cases, such as this case. Where the settlement amount is a “certain or easily calculable sum of money,” use of the percentage-of-the-fund method is appropriate. (*Serrano III*, 20 Cal. 3d at 35).

1 In *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, a wage and hour class action wherein
2 class counsel obtained a \$19 million non-reversionary settlement on behalf of the class, the California
3 Supreme Court approved the use of the percentage of fund or common fund method to award one-
4 third of the settlement amount or \$6,333,333.33 to class counsel for attorneys' fees. The Court stated:

5 Whatever doubts may have been created by *Serrano III*, supra, 20 Cal.3d 25, [], or the
6 Court of Appeal cases that followed, we clarify today that use of the percentage method
7 to calculate a fee in a common fund case, where the award serves to spread the attorney
8 fee among all the beneficiaries of the fund, does not in itself constitute an abuse of
9 discretion. We join the overwhelming majority of federal and state courts in holding
10 that when class action litigation established a monetary fund for the benefit of the class
11 members, and the trial court in its equitable powers awards class counsel a fee out of
12 that fund, the court may determine the amount of a reasonable fee by choosing an
13 appropriate percentage of the fund created. The recognized advantages of the percentage
14 method - including relative ease of calculation, alignment of incentives between counsel
15 and the class, a better approximation of market conditions in a contingency case, and
16 the encouragement it provides counsel to seek an early settlement and avoid
17 unnecessarily prolonging the litigation [] convince us the percentage method is a
18 valuable tool that should not be denied our trial courts.

19 (*Laffitte*, 1 Cal.5th at 503).

20 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court stated:
21 “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others derive
22 benefits may require those passive beneficiaries to bear a fair share of the litigation costs.” Similarly,
23 in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, the California Supreme
24 Court recognized that the common benefit doctrine has been applied “consistently in California when
25 an action brought by one party creates a fund in which other persons are entitled to share.”

26 Numerous appellate courts have similarly found. (*See e.g., Knoff v. City and County of San*
27 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
28 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable powers);
Rider v. County of San Diego (1992) 1 I Cal.App.4th 1410, 1423 (attorneys’ fees and expenses properly
awarded from common benefit composed of illegally imposed sales and use tax); *Bank of America v.*
Cory (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by action
compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556,
567-568 (court upheld fee award equal to one-third of the damages to owners of residential property
in an inverse condemnation action)).

1 The Supreme Court noted that several courts have expressed frustration with the alternative
2 “lodestar” approach for deciding fee awards, which usually involves wading through voluminous and
3 often indecipherable time records. (*Laffitte*, 1 Cal.5th at 503; *see Lealao v. Beneficial California, Inc.*
4 (2000) 82 Cal.App.4th 19, 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373,
5 1375). The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class
6 counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing
7 an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources.
8 (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79). The Ninth Circuit now routinely uses the
9 percentage of the common fund approach to determine the award of attorney’s fees. (*Lealao*, 82
10 Cal.App.4th at 30-31; *see e.g., In re Pac. Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79
11 (approving attorney’s fee of 33%)).

12 A fee of one-third (33.33%) of the Gross Fund Value (*i.e.*, \$597,999.40) is easily within the
13 range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to
14 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig.*, 723 F. Supp. at
15 1378). According to Professor Newberg: “No general rule can be articulated on what is a reasonable
16 percentage of a common fund...Usually 50 per cent of the fund is the upper limit on a reasonable fee
17 award from a common fund, in order to assure that fees do not consume a disproportionate part of the
18 recovery obtained for the class, though somewhat larger percentages are not unprecedented.”
19 (Newberg on Class Actions (4th Ed.), § 14.6). Class Counsel’s requested fee is reasonable and falls
20 well within the historical range of attorney’s fee awards under the common fund theory. Based on
21 Class Counsel’s showing of reasonableness, the Court should approve the requested fees pursuant to
22 the common fund approach.

23 **B. The Circumstances of this Case Support a One-Third (1/3) Fee Award**

24 Given the significant results achieved under the circumstances of this litigation, the requested
25 fee award is reasonable. As discussed in *Sumitomo Copper Litigation*, *supra*, 74 F. Supp. 2d at 396:

26 No one expects a lawyer whose compensation is contingent on the
27 success of his services to charge, when successful, as little as he
28 would charge a client who in advance of the litigation has agreed to
pay for his services, regardless of success. Nor, particularly in
complicated cases producing large recoveries, is it just to make a fee
depend solely on the reasonable amount of time expended.

1 In that vein, this Court should consider the contingent nature of this case, the uncertainty of
2 the outcome, the quality of the counsel, and the preclusion from other employment.

3 **C. The Contingent Nature of This Matter**

4 From the outset of the Action to the present, prosecution of this matter has involved significant
5 financial risk for Class Counsel. Class Counsel undertook this matter solely on a contingent basis,
6 with no guarantee of recovery. Class Counsel has placed its own resources at risk to prosecute this
7 matter with no guarantee of success. The risks of this matter are apparent in that class certification
8 would likely have been a hard-fought issue, especially given the uncertainty regarding certification of
9 cases such as this. Moreover, even if class certification were granted over Defendant's opposition,
10 there was no assurance that Plaintiff would succeed at trial. (Gold Decl., ¶¶ 31-35). Despite such
11 challenges, Class Counsel was able to persuade Defendant that it faced significant liability exposure
12 such that it was willing to pay \$1,794,000.00 to settle the Class Members' claims.

13 **D. The Experience, Reputation, Ability of Counsel, and Skill in Litigation**

14 Class Counsel has substantial experience in wage-and-hour and other class action litigation,
15 including litigation involving the legal issues in this matter. (Gold Decl., ¶¶ 2-16). Class Counsel's
16 skill in developing a factual record and convincing Defendants of their litigation exposure under
17 California law was essential to achieving the Settlement. Through its skill and reputation, Class
18 Counsel was able to obtain a settlement that provides an outstanding result for Class Members. (*See*
19 *generally* Gold Decl.).

20 **E. The Results Achieved**

21 The excellent results achieved by the Settlement support Class Counsel's request for attorneys'
22 fees. Class Members' support for the results achieved by Class Counsel is demonstrated by the
23 absence of any objections to either the Class Settlement or to Class Counsel's request for fees, both of
24 which were described clearly in the Class Notice. As of the date of this Motion, Settlement Class
25 Members will be paid, on average, approximately \$1,457.56, each, which is intended to compensate
26 them for the alleged wage and hour violations they suffered during their employment. (Nava Decl., ¶
27 17). This is a significant benefit for the Settlement Class Members here as it represents a recovery for
28 highly disputed claims. Equally important is the fact that the State of California will receive

1 \$134,550.00 for enforcement of labor laws and education of employers. (Gold Decl., Exh. 5, First
2 Amendment to Class Action and PAGA Settlement Agreement and Class Notice, ¶ 66).

3 Furthermore, the efficiency with which this litigation was conducted and resolved should be
4 rewarded. After preparing and investigating the case prior to filing the Action, Class Counsel strongly
5 litigated and then resolved the case in an efficient manner. The Class Members will directly benefit
6 from the prompt and fair resolution of their claims. They will be receiving a significant award in a
7 relatively short period of time, as opposed to waiting years to recover some undetermined amount if
8 they succeeded at trial, which is an uncertainty in itself.

9 **F. Preclusion of Other Employment**

10 As California law recognizes, Class Counsel's commitment to this litigation should not be
11 assessed in a vacuum. (*See Serrano, supra*, 20 Cal.3d at 49). A relevant factor in determining
12 attorneys' fees is whether the litigation required Class Counsel to forego other employment. (*See*
13 *ibid*). Class Counsel had to consider its workload during this litigation when considering taking on
14 additional work that was available, and which Class Counsel had to forego in order to devote the time
15 necessary to pursue this litigation. (Gold Decl., ¶ 47).

16 **G. The Requested Fees Are Also Justified Under the Lodestar Method**

17 Fee calculations under the lodestar method would result in a similar award, demonstrating the
18 fairness of Class Counsel's percentage fee request. Under the lodestar method, a base fee amount is
19 calculated from a compilation of time reasonably spent on the case and the reasonable hourly
20 compensation of the attorney. The base amount is then adjusted by use of a multiplier in light of
21 various factors. (*Serrano III, supra*, 20 Cal.3d at 48). Class Counsel's hourly rates are summarized
22 in the Gold Decl. at ¶¶ 42-45.

23 One difficulty in determining the hourly rate of attorneys of similar skill and experience in the
24 relevant community is the scarcity of hourly fee-paying clients in class action litigation. (Gold Decl.,
25 ¶ 45). As a practical matter, few if any employees or consumers pay attorneys' fees on an hourly basis
26 for such extensive litigation, and thus retainer agreements in such cases are based on a stepped-up
27 contingency fee (with the percentage increasing from one-third to forty-five – and sometimes even
28 fifty percent, which is on par with personal injury contingency fee agreements – if the case goes to

trial). (Ibid). Therefore, there is no customary hourly billing rate for work that is routinely based on a contingent fee relationship, but the nature of class action work should be strongly considered by the Court. (Ibid). Wage and hour work presents a specialized and challenging area of law that is not within the knowledge of many lawyers. (Ibid). This kind of class action work requires specialized learning and the willingness to take large risks. (Ibid).

Class Counsel has spent approximately **686.3** total hours litigating these claims to date.¹ (Gold Decl., ¶ 43). Class Counsel expects to spend another 35 hours in connection with the final approval process (including finalizing the motion for final approval and supporting documents, preparing for and attending the Final Approval Hearing, and managing the Settlement through its conclusion, including anticipated communications with defense counsel, the Settlement Administrator, the client, and Class Members). (*Id.*, ¶ 44). In addition to time spent during litigation, reasonable hours also include the time spent before the Action was filed, including time spent interviewing the client, investigating the facts and the law, preparing the initial pleadings, as well as litigating the case. (*Webb v. Board of Educ.* (1985) 471 U.S. 234). Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. (*Serrano v. Priest* (1982) 32 Cal .3d 621, 639 (“*Serrano IV*”). Based on the rates of Class Counsel, the total fees incurred to date are \$619,367.50. (Gold Decl., ¶ 43). By the conclusion of this matter, the total fees are estimated to be approximately **\$649,525.83**. (*Id.*, ¶ 44).

In cases where a common fund analysis is not used, once the court establishes the lodestar amount, it should adjust the fee award by a multiplier in order to make an appropriate fee award. (*Serrano III, supra*, 20 Cal.3d at 48). In applying the multiplier, *Newberg on Class Actions* states that “[m]ultiples ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied. A large common fund award may warrant an even larger multiplier.” (4 *Newberg on Class Actions* 4th (4th ed. 2002) § 14.6). If the class members paid the fees that the market would

¹ In *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559, the court addressed the issue of what evidence is required in California to support a fee application. The court held: “Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records.” *Id.* There is no need to attach the voluminous invoices prepared in a case as a basis for an award of fees and costs. *Id.* Through Class Counsel's declarations in support of this application, however, Plaintiff presents a thorough breakdown of the hours spent and costs incurred in prosecuting this class action. Pursuant to *Martino, supra*, this presentation is sufficient to support the amount requested.

1 bear, they would pay a fee of anywhere from one-third to forty-five percent of any recovery. Since
2 this is the market rate, the lodestar calculation should be enhanced to reflect what the class members
3 would pay on the open market. (*Lealao*, *supra*, 82 Cal.App.4th at 47-48).

4 In *Lealao*, the court held that trial courts should award lodestar fees by examining the
5 percentage-of-the-benefit and adjusting the lodestar calculation accordingly. (*Id.* at 49 & 53). The
6 court indicated that this is an upward adjustment and should be akin to a contingency fee recovery;
7 the court stated, “[a]n adjustment reflecting the amount of the class recovery is not significantly
8 different from an adjustment reflecting a percentage of that amount; and California courts have
9 evaluated a lodestar as a percentage of the benefit.” (*Id.* at 46). The *Lealao* method appears
10 particularly appropriate because class actions generally are contingency fee cases for plaintiffs - and
11 the class action clients do not expect to pay an hourly fee.

12 The rationale of *Lealao* comports with the purpose of the multiplier. The multiplier is
13 “primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of
14 nonpayment in contingency cases.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138). The *Lealao*
15 court reasoned:

16 Given the unique reliance of our legal system on private litigants to enforce
17 substantive provisions of law through class and derivative actions, attorneys
18 providing the essential enforcement services must be provided incentives
19 roughly comparable to those negotiated in the private bargaining that takes
20 place in the legal marketplace, as it will otherwise be economic for
defendants to increase injurious behavior. It has therefore been urged (most
persistently by Judge Richard Posner) that in defining a reasonable fee in
such representative actions, the law should mimic the market.

21 In the class action context, that would mean attempting to award the fee that
22 informed private bargaining, if it were truly possible, might have reached.
23 The simplest way for the law to duplicate the bargain that informed parties
would reach if agency costs were low is to look to fee award levels in actions
brought by sophisticated private parties under the same or comparable
statutes.

24 (*Lealao*, 82 Cal.App.4th at 47-48 (internal citations and quotations omitted)). The court added:

25 [T]rial judges need the flexibility *Serrano III* provides, as it enables them to
26 relate fee awards to the economic realities that determine the efficacy of the
private enforcement contemplated by our civil justice system.
27 Accordingly, we hold that, in cases in which the value of the class recovery
28 can be monetized with a reasonable degree of certainty and it is not
otherwise inappropriate, a trial court has discretion to adjust the basic
lodestar through the application of a positive or negative multiplier where
necessary to ensure that the fee awarded is within the range of fees freely
negotiated in the legal marketplace in comparable litigation.

1 (*Id.* at 49-50).

2 In looking at similar cases, including those set forth above, Class Counsel's requested fee
3 comports to the market. Based on the reasonable hourly rates suggested by Class Counsel and the
4 collective hours worked in this matter, the requested fee award would represent a negative multiplier
5 of the current total fee lodestar. In this regard, Class Counsel's fee request is reasonable.

6 **H. No Class Member Objected to the Requested Attorneys' Fee Award**

7 Class Counsel's intention to request the Court's approval for payment of attorneys' fees was
8 clearly disclosed to each Class Member in the Court-approved Class Notice. As of the filing of this
9 Motion, there has not been a single objection to the request for attorneys' fees. (Nava Decl., ¶ 12-15).
10 It is fair to conclude that the Class approves of/does not take issue with the requested award of
11 attorneys' fees. Based thereon, Class Counsel's request for one-third (33.33%) of the Gross Fund
12 Value, equaling \$597,999.40, should be granted.

13 **I. Plaintiff's Cost Request is Reasonable**

14 Class Counsel seeks reimbursement of a total amount of twenty-three thousand dollars and
15 zero cents (\$23,000.00) in costs and expenses in this matter, which includes reasonable future costs
16 for filing the Motion. (Gold Decl., Exh. 5, First Amendment to Class Action and PAGA Settlement
17 Agreement and Class Notice, ¶ 66). All costs and expenses were reasonably incurred in prosecution
18 of this matter.

19 **VIII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE**

20 The named Plaintiff should be awarded an Enhancement Payment in the amount of seven
21 thousand five hundred dollars and zero cents (\$7,500.00) for his services as the Class Representative
22 and the risks in connection with that role. Enhancement awards in wage and hour cases typically range
23 from \$5,000.00 to \$20,000.00, although some awards are higher. (*Ibid.*). Often, multiple class
24 representatives receive awards in the above range. (*See e.g., Munoz v. BCI Coca-Cola Bottling Co. of*
25 *Los Angeles* (2010) 186 Cal.App.4th 399, 412 [approving an enhancement request of \$10,000.00 per
26 named plaintiff in a 188 member class]; *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); *Thornton*
27 *v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) ["We also think there is something to
28 be said for rewarding those drivers who protect and help to bring rights to a group of employees who

1 have been the victims of discrimination.”)]. Here, the requested Class Representative Service Payment
2 is modest, reasonable, and should be approved.

3 Plaintiff’s actions establish that: (1) he sought to protect the interests of the Class above his
4 own personal interests; (2) the Settlement Class Members will be benefitted from his actions by
5 receiving a payment without having to do anything; and (3) Plaintiff has put forth a significant amount
6 of time and effort pursuing the litigation and seeing it through to resolution. (*See, generally, Romero*
7 *Decl.; see also Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804
8 (discussing the criteria for determining class representative enhancement awards in concluding that a
9 requested award of \$25,000 for two class representatives was too high)).

10 The requested award for Plaintiff is also reasonable given the financial and personal risk he
11 took in commencing the Action, and in light of the benefits that his actions have conferred upon the
12 Class. (*Romero Decl.*, ¶ 7; *See also Van Vranken v. Atl. Richfield Co.* (N.D.Cal. 1995) 901 F.Supp.
13 294, 299-300). Additionally, in considering a requested class representative enhancement award,
14 courts take into consideration a plaintiff’s reasonable fear of retaliation. (*Staton v. Boeing Co.* (9th
15 Cir. 2003) 327 F.3d 938, 977). Here, it is easy to see that a potential future employer could expend
16 little effort to discover Plaintiff brought the lawsuit – and based thereon, decline to offer Plaintiff
17 employment.

18 In sum, Plaintiff has performed considerable services on behalf of the Class during the
19 litigation. (*See, generally, Romero Decl.*). Class Counsel cannot understate the importance of the role
20 of an employee who is willing to search out an attorney and step forward to assume the risk of litigation
21 and retaliation in order to represent a class and put the interests of the class before their own interests.
22 Plaintiff has understood that this is a class action where he is serving as the Class Representative and
23 must protect the Class Members’ interests. (*Id.*, ¶ 6). Plaintiff was the catalyst to the benefit reached
24 for the Class Members, and has actively protected the Class Members’ interests during the pendency
25 of this matter and will continue to do so even if the case was required to go to trial. (*Ibid.*). Plaintiff
26 spent numerous hours participating in this matter by searching for an attorney, communicating with
27 his attorneys on numerous occasions, searching for and producing relevant documents related to his
28

1 employment, responding to his attorneys' inquiries, reviewing the settlement documents, and
2 approving the Settlement on behalf of all Class Members. (*See*, generally, Romero Decl.).

3 In contrast, without having to take on any of the risk incurred by Plaintiff or time spent by
4 Plaintiff in litigating this matter, Settlement Class Members will automatically be issued a payment
5 for their claims. It appears that the Settlement Class Members recognize this enhancement was
6 justified because since the time the Class received notice of the requested Enhancement Payment, no
7 one has objected to the request. Thus, the Enhancement Payment to Plaintiff is warranted to
8 compensate him for his time and effort, the fear and stress associated with assuming the responsibility
9 of serving as the Class Representative, and the concrete risks he assumed as the Class Representative.

10 **IX. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE**
11 **REASONABLE**

12 In Plaintiff's Motion for Preliminary Approval, Plaintiff requested, and the Court approved,
13 Settlement Administration Costs not to exceed Eleven thousand five hundred and zero cents
14 (\$11,500.00). (Gold Decl., Exh. 3). Apex Class Action, LLC is the approved Settlement
15 Administrator. (Ibid). It is an experienced class administrator and has adequately performed the
16 administration tasks required by the Preliminary Approval Order. Apex's *actual* costs to administer
17 the Settlement are only Ten thousand nine hundred and ninety dollars and zero cents (\$10,990.00).
18 (Nava Decl., ¶ 20). Based thereon, the requested costs should be approved.

19 **X. THE PROPOSED LWDA ALLOCATION IS REASONABLE**

20 Pursuant to California Labor Code Section 2699(1), the Superior Court shall review and
21 approve the settlement of penalties sought under that California Labor Code Section. (Cal. Lab. Code
22 § 2699(1)). For all of the reasons stated above, the Settlement is fair, reasonable, and adequate, and
23 should be approved. As part of the Settlement, Defendant has agreed to pay One hundred and seventy-
24 nine thousand four hundred and zero cents (\$179,400.00) to settle the claims of the Aggrieved
25 Employees brought pursuant to PAGA, of which the payment of One hundred thirty-four thousand,
26 five hundred and fifty dollars and zero cents (\$134,550.00) (75% of the PAGA Payment) will be paid
27 to the LDWA for education and enforcement purposes. (Gold Decl., Exh. 5, First Amendment to
28 Class Action and PAGA Settlement Agreement and Class Notice, ¶ 66).

It is extremely common in approved wage and hour class action cases that settle that only a

1 small portion of the total settlement is paid to PAGA penalties “in order to maximize payments to
2 class members.” (*Magadia v. Wal-Mart Assocs.* (N.D. Cal. May 31, 2019, No. 17-CV-00062-LHK)
3 2019 U.S. Dist. LEXIS 91732, *90-91, citing as examples *Ceja-Corona v. CVS Pharm., Inc.* (E.D.
4 Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 [preliminarily approving
5 \$10,000 in PAGA penalties out of a total settlement amount of \$900,000]; *Thio v. Genji, LLC* (N.D.
6 Cal. 2014) 14 F. Supp. 3d 1324, 1330 [preliminarily approving \$10,000 in PAGA penalties out of a
7 total settlement amount of \$1,250,000]; *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012
8 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 [granting final approval of \$10,000 in PAGA
9 penalties out of a total settlement amount of \$2,500,000]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal.
10 Oct. 31, 2012) 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 [granting final approval of
11 \$10,000 in PAGA penalties out of a total settlement amount of \$3,700,000]; *Chu v. Wells Fargo Invs.,*
12 *LLC* (N.D. Cal. Feb. 16, 2011) 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1 [granting final
13 approval of \$10,000 in PAGA penalties out of a total settlement amount of \$6,900,000]). Like here,
14 in these approved settlements, the Parties generally maximized statutory penalties and minimized
15 PAGA penalties to focus on claims to the Class Members, the persons who actually suffered the
16 California Labor Code violations.

17 **XI. THE CLASS RECEIVED THE BEST PRACTICABLE NOTICE**

18 California law vests the Court with broad discretion in fashioning an appropriate notice
19 program. (*See* California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-
20 74). To protect the rights of absent class members, the parties must provide class members with the
21 best notice practicable of a potential class action settlement. (*Phillips Petroleum Co. v. Shutts* (1985)
22 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76 [individual notice
23 must be sent to all class members who can be identified through reasonable efforts]; *Mullane v. Central*
24 *Hanover Bank & Garretson Company* (1950) 339 U.S. 306, 314 [best practicable notice is that which
25 is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of
26 the action and afford them an opportunity to present their objections"]). The content and method of
27 the notice should be designed to apprise the class members of the terms of the proposed settlement
28 and of the class members' rights regarding the settlement. (*See Mullane, supra*, 339 U.S. at 314;

1 *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323
2 F. Supp. 364, 378).

3 The Class Notice approved by the Court met these requirements: it identified the Parties and
4 described the Action, the Class, the Gross Fund Value, the proposed method for distribution of the
5 Gross Fund Value, the amounts proposed to be paid as the Enhancement Payment to Plaintiff, the
6 Settlement Administration Costs to the Settlement Administrator, and the Attorneys' Fees and Costs
7 to Class Counsel. (Gold Decl., ¶ 50). The Class Notice described the proposed Settlement with
8 enough specificity to allow each Class Member to make an informed choice whether to accept and
9 participate in it. (Ibid). It also explained how and when Class Members may object to or opt out of
10 the Class Settlement. (Ibid). Finally, the Class Notice provided the date for the hearing on final
11 approval of the Settlement and informed Class Members how to obtain additional information about
12 the Settlement. (Ibid).

13 **XII. CONCLUSION**

14 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
15 Motion for Final Approval of Class Action and PAGA Settlement, and approve: (1) the requested
16 attorneys' fees to Class Counsel of \$597,999.40; (2) the requested reimbursement of actual costs and
17 expenses to Class Counsel of \$23,000.00; (3) the requested Enhancement Payment to Plaintiff of
18 \$7,500.00; and (4) the requested Settlement Administration Costs to the Settlement Administrator of
19 \$10,990.00; and permit the filing of a memorandum that exceeds the page limit.

20 Respectfully submitted,

21 Dated: May 13, 2025

BLACKSTONE LAW, APC

22 By: 
23 Karen I. Gold
24 Sara Pezeshkpour
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27 Attorneys for Plaintiff JESSE ROMERO,
28 Individually, on behalf of others similarly situated,
and on behalf of Aggrieved Employees pursuant to the
California Private Attorneys General Act