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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

KENTON SAMUELS on behalf of himself, all others similarly situated, and on behalf of the general public, Plaintiffs, v. WIS INTERNATIONAL, INC.; CHI MANAGEMENT GROUP LP; CROSSMARK, INC.; and DOES 1-100, Defendants.	Case No. 23CV012186 (Consolidated with Case No. 24CV00311) [*Assigned for all purposes to the Honorable Jill Talley; Dept. 8A*] **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF KENTON SAMUELS' MOTION FOR FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT** Date: August 28, 2026 Time: 9:00 a.m. Date Filed: November 22, 2023 Trial Date: None Set

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I. INTRODUCTION

This motion seeks final approval of a non-reversionary $6,375,000 proposed wage and hour class action settlement by Plaintiff Kenton Samuels ("Plaintiff") and Defendants Retail Services WIS Corp. dba WIS International; Crossmark, Inc., and CHI Management Group, LP (collectively "Defendants") (Plaintiff and Defendants are collectively referred to as the "Parties").[1] The settlement is on behalf of all current and former non-exempt employees of Defendants who worked in California during the Class Period ("Class Members").[2] The Class Period is November 22, 2019, through June 7, 2025.[3] The proposed Agreement satisfies all the criteria for final approval under Rule 3.769 of the California Rules of Court.

This settlement seeks relief for 13,174 Class Members and will provide Class Members with an average estimated payment of approximately $285.04, with the highest estimated award being approximately $3,532.32.[4] The Settlement and all its terms received overwhelming support from Class Members as there were no objections or disputes, and only five requests for exclusion.[5] As such, 99.95% of the Class Members are Participating Class Members.[6]

The Court is therefore respectfully requested to honor the Class Members' endorsement of the settlement and grant final approval of the settlement, attorneys' fees, litigation costs, class representative enhancement payment, costs of settlement administration, and payment to the LWDA pursuant to PAGA in the amounts as preliminarily approved by this Court, as fully disclosed to the Class Members during the notice process, and as requested herein. This motion also seeks an order entering judgment.

II. BACKGROUND, INVESTIGATION, AND LITIGATION HISTORY

a. Background and Litigation History

Defendants provide their customers with retail and manufacturing services, such as inventory and merchandising, in the State of California. Plaintiff and the Class Members were

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[1] The Settlement Agreement is attached to the Declaration of David Mara, Esq. ("Mara Dec.") as Exhibit 1. "Exhibit 1" herein refers to the Settlement Agreement.
[2] Ex. 1 at § I, ¶ D, Page 4.
[3] Ex. 1 at § III, ¶ P(3), Page 24.
[4] Declaration of Beth Paris on Behalf of Apex Class Action, LLC, in Support of Motion for Final Approval of Class Action and PAGA Settlement ("Paris Dec.") ¶ 18.
[5] *See* Paris Dec. ¶¶ 11-13.
[6] Paris Dec. ¶ 14.

employed by Retail Services WIS Corp. (a company operated under the umbrella of WIS International, Inc.) until approximately September 2022. Around that time, Crossmark, Inc. was acquired by WIS International, Inc. and became Plaintiff's and the Class Members' employer. Defendants employed hourly non-exempt employees to provide services to their customers throughout the Class Period.

On November 22, 2023, Plaintiff filed a class action complaint against WIS International, Inc.[7] (Case No. 23CV012186). On January 10, 2024, Plaintiff filed a First Amended Complaint that added CHI Management Group LP and Crossmark, Inc. as named Defendants. On July 11, 2024, Plaintiff filed an Amendment to his First Amended Complaint naming Retail Services WIS Corp. as Doe 1. (Mara Dec. at ¶ 11).

Plaintiff submitted a letter to the Labor and Workforce Development Agency ("LWDA") in accordance with the Private Attorneys General Act of 2004 ("PAGA") on October 31, 2023. On January 9, 2024, Plaintiff submitted a second letter to the LWDA. On January 10, 2024, Plaintiff filed a PAGA complaint in this Court (Case No. 24CV00311). On July 11, 2024, Plaintiff submitted an amended letter to the LWDA. As part of the settlement, Plaintiff submitted a second amended letter to the LWDA. (Mara Dec. at ¶ 12).

The class and PAGA actions were consolidated by the Court on July 19, 2024. As part of the settlement, Plaintiff filed a Second Amended Complaint. (Mara Dec. at ¶ 13).

b. Discovery and Investigation

The Parties conducted significant investigation and discovery of the facts and law. Defendants produced relevant policy documents that covered employees' employment with Defendants, such as employee handbooks, manuals memoranda, and other forms of communication of Defendant's policies at issue in this matter. Defendants also produced a robust sampling of time and wage records for Class Members, which Plaintiff retained an expert to provide analysis. Defendant also produced, the number of current and former employees, as well as the number of workweeks worked by Class Members during the relevant time period. From this discovery, Plaintiff and his Counsel were able to analyze Defendants' liability and prepare a

[7] WIS International, Inc. was dismissed from the case on July 12, 2024.

realistic damage model for preparation of mediation as well as the case for class certification and beyond. (Mara Dec. at ¶ 14).

c. The Parties Attended Mediation

The Parties attended an all-day mediation presided over by wage and hour mediator Brandon McKelvey on April 1, 2025, which ended with Mr. McKelvey issuing a mediator's proposal that was ultimately accepted by all Parties and resulted in the settlement agreement that was ultimately preliminarily approved by the Court. (Mara Dec. at ¶ 15).

III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS' RESPONSE

a. Non-Reversionary Settlement Amount and Deductions from the Settlement

The Parties have agreed, subject to and contingent upon the Court's approval, that this action be settled and compromised for the non-reversionary total sum of $6,375,000, which includes: (a) attorneys' fees of $2,122,875 (33.33% of the MSA); (b) litigation expenses in the amount of $23,415.11 (originally estimated not to exceed $30,000); (c) a service award to the named class representative, Kenton Samuels, in the amount of $15,000; (d) claims administration fees and expenses to Apex in the amount of $59,995 (originally estimated not to exceed $75,000);[8] and (e) PAGA payment of $400,000 allocated to Plaintiff's PAGA claims. As such, the Net Settlement Fund is estimated to be approximately $3,753,714.89.

b. Individual Settlement Payments and Tax Allocations

i. Individual Class Settlement Payments

Each Participating Class Member is entitled to an Individual Class Settlement Share based on the number of workweeks they worked during the Class Period. (Ex. 1 at § III, ¶ F(2), Page 10). Participating Class Members' individual settlement shares will be apportioned as 15% wages and 85% penalties and interest. (Ex. 1 at ¶ 61). Defendant will be pay the employer-side payroll taxes separately. (*See* Ex. 1 at § III, ¶ F(2), Pages 10-11).

ii. Individual PAGA Settlement Payments

The Settlement Agreement allocates $400,000 to Plaintiff's PAGA claims. PAGA Employees are all current and former non-exempt employees of Defendants who worked in

[8] Paris Dec. ¶ 21.

California during the PAGA Period. (Ex. 1 at § I, ¶ T, Page 5). The PAGA Period is November 6, 2022, through June 7, 2025. (Ex. 1 at § I, ¶ U, Page 5). Seventy-five percent (75%) of this amount, or $300,000, will be paid to the LWDA, while the remaining 25%, or $100,000, will be distributed to the PAGA Employees. Each PAGA Employees will receive an Individual PAGA Settlement Share based upon the number of pay periods with worked during the PAGA Period. (Ex. 1 at § III, ¶ F(3), Page 11). The payments will be apportioned as one hundred percent (100%) penalties. (Ex. 1 at § III, ¶ F(3), Page 11).

c. Released Claims

In exchange for an Individual Class Settlement Payment, Participating Class Members will release all claims, debts, liabilities, demands, actions, or causes of action under state, federal or local law, whether statutory, common law or administrative, that were alleged in the Actions and/or LWDA Notices or that reasonably could have been alleged based on the factual and/or legal allegations in the Actions and/or LWDA Notices. (Ex. 1 at § III, ¶ I(1), Pages 12-13).

In addition, all PAGA Members will release, in exchange for an Individual PAGA Settlement Payment, all claims, actions, and causes of action for civil penalties, attorneys' fees, costs or interest arising under the Private Attorneys General Act, California Labor Code § 2698, et seq. that were alleged or that reasonably could have been alleged in the Actions and/or the LWDA Notices based on the factual allegations and legal theories contained in the Actions and/or the LWDA Notices. (Ex. 1 at § III, ¶ I(3), Page 15-16).

In addition, Plaintiff has agreed to a general release of his claims. (*See* Ex. 1 at § III, ¶ I(2), Page 14-15).

The releases will be effective upon Defendants' funding the Maximum Settlement Amount. (*See* Ex. 1 at § III, ¶ I(1), Pages 12-13; § III, ¶ I(3), Page 15-16).

d. Notice to the Class

On April 17, 2026, Apex received the Class Data. The Class List consisted of a total of 13,174 individuals. (Paris Dec. ¶ 4). In preparation for mailing, all 13,174 names and addresses listed in the Class List underwent verification and updating against the National Change of Address (NCOA) database maintained by the United States Postal Service (USPS). (Paris Dec. ¶ 6).

On May 1, 2026, the Class Notice in English and Spanish was sent to all 13,174 individuals listed in the Class List via U.S First Class Mail. (Paris Dec. ¶ 7). Class Members had until June 30, 2026, to respond to the settlement. (Paris Dec. ¶ 10).[9]

One thousand seven hundred and fifty (1,750) Class Notices were initially returned to Apex as undeliverable. Apex conducted a computerized skip trace on the 1,750 returned Class Notices to acquire updated addresses for the purpose of re-mailing the Class Notice to these individuals. This skip trace effort resulted in obtaining 1,426 updated addresses, to which Apex promptly re-mailed the Class Notices via U.S First Class Mail. (Paris Dec. ¶ 8). A total of 324 Class Notices – representing 2.46% of the Class Members – have been considered undeliverable as no updated address was found by skip tracing. (Paris Dec. ¶ 9).

The settlement received overwhelming support from the Class Members. Not a single Class Member has objected to the settlement or submitted a dispute. (Paris Dec. ¶¶ 12, 13). In addition, only five (5) Class Members requested to be excluded from the settlement. (Paris Dec. ¶ 11). Therefore, 13,169 Class Members are participating in the settlement, meaning 99.95% of the Class Members are Participating Class Members. (Paris Dec. ¶ 14).

e. Distribution of Funds

Defendants shall wire the Maximum Settlement Amount and the Employer Taxes within 30 business days of the Effective Date. (Ex. 1 at § III, ¶ G(1), Page 11). The Effective Date is the date by which all of the following have occurred: the Court has finally approved the Settlement and entered Judgment thereon pursuant to California Rules of Court 3.769(h); and the Judgment has become Final. (Ex. 1 at § I, ¶ K, Page 4). The Judgment becomes final when the Settlement has been finally approved by the Court without material modification and either: (i) if there are no objections, appeals, or writs, or if an objection(s) is made and overruled, 61 days after notice of entry of the order granting final approval of the Settlement; or (ii) if an appeal, review, or writ is sought from the final approval order, the day after the Judgment is affirmed or the appeal, review or writ is dismissed or denied, and the Judgment is no longer subject to further judicial review. (Ex. 1 at § I, ¶ L, Page 4).

[9] Class Members with remailed notices had until July 15, 2026. (Paris Dec. ¶ 10).

The Settlement Administrator shall distribute the settlement funds within ten (10) business days of receipt of payment from Defendants. (Ex. 1 at § III, ¶ G(2), Pages 11-12).

f. Uncashed Checks

Individual Settlement Payment checks issued to Participating Class Members and Individual PAGA Settlement Shares issued to PAGA Employees shall remain valid for a period of 180 calendar days after they issue and shall be cancelled thereafter. Uncashed checks and/or checks that are not cashed, deposited, or otherwise negotiated, will be sent to the State Controller's Unclaimed Property Fund in the name of the intended recipient. (Ex. 1 at § III, ¶ G(3), Page 12).

g. Notice of Final Judgment

A copy of the final judgment will be posted to the Settlement Administrator's website for a period of at least 60 days. (*See* Ex. 1 at § III, ¶ S, Pages 25-26).

IV. ARGUMENT

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

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

In deciding whether to approve a class settlement, a court evaluates whether the proposed settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co*. (1996) 48 Cal. App. 4th 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of S.F*. (9th Cir. 1982) 688 F.2d 615, 625); *Cho v. Seagate Tech. Holdings, Inc*. (2009) 177 Cal. App. 4th 734, 742 43. A court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801. However, "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." *Dunk*, 48 Cal. App. 4th at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a court should consider additional relevant factors, including the strength of the plaintiff's case compared to the settlement amount; the risk, expenses, complexity, and likely duration of further litigation; and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th at 1802; *see also In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723; *see also Boyd v. Bechtel Corp*. (N.D. Cal. 1979) 485 F. Supp. 610, 617.

At the time of preliminary approval, the Court was provided with sufficient information to satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown until after the Class had an opportunity to respond to the settlement. Subject only to the Class's reaction to the settlement, the Court preliminarily presumed the settlement was fair, adequate and reasonable. Not a single objection to the settlement has been submitted by any Class Member to the Settlement Administrator. Thus, the settlement is entitled to the presumption that it is fair and in all other respects proper and should be finally approved.

b. The Court Should Approve the Requested Fees and Costs

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

Class Counsel applies for an award of attorneys' fees in the sum of $2,122,875 (33.33% of the MSA), and litigation costs of $23,415.11 (originally estimated not to exceed $30,000). (Mara Dec. ¶ 16). California courts have recognized an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits to Class Members by the settlement, also known as the "common fund" method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627; *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516; *In re Rite Aid Corp. Securities Litigation* (3d Cir. 2005) 396 F.3d 294, 300. The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share."

Indeed, the California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* that using the percentage method has many advantages:

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

Id. at 503 (internal citation omitted).[10] Because there is a defined and traceable benefit to the Class, the Court can base an award of attorneys' fees using a 'common fund' approach.

California law provides that an attorneys' fee award should be equivalent to fees paid in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Lealao*, *supra*, 82 Cal.App.4th at 53. Therefore, fees in class and representative actions should approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id*. at 48.

"The ultimate goal . . . is the award of a 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of calculation." *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270). It is not an abuse of discretion to choose one method over another as long as the method chosen is applied consistently using percentage figures and/or rates that accurately reflect the marketplace. In cases where class members present claims against a settlement amount and the

[10] *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 ("We hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . . they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee").

settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Lealao v. Beneficial Cal., Inc.* (200) 82 Cal.App.4th 19, 32.

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

Courts have consistently recognized that class action litigation is increasingly necessary to protect the rights of individuals whose injuries and/or damages are too small to economically justify legal action on an individual basis. Accordingly, in determining a reasonable fee award, courts award fees to serve as an economic incentive for lawyers to pursue such litigation in order to achieve increased access to the judicial system for meritorious claims and to enhance deterrents to wrongdoing. This is especially true in situations where multiple similar alleged wrongs would not be economically feasible to pursue individually, such as here. *See* A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at 6.

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

Under the terms of the Agreement, Defendants will pay a Gross Settlement Amount of

$6,375,000. An award of attorneys' fees is to be calculated as a percentage of the total value of benefits made available to the Class Members under the settlement. In light of Class Counsel's prosecution and resolution of the case, the requested Attorneys' Fees are appropriate and reasonable. Class Counsel have obtained a substantial recovery on behalf of Plaintiff and the Class. Thus, the requested Class Counsel Fees Payment is appropriate. In short, Class Counsel's fee request of $2,122,875 (which represents 33.33% of the MSA) is in line with awards in similar cases in California and nationwide and demonstrates that Class Counsel's fee request is consistent with market rates and is reasonable.

ii. The Requested Attorney's Fee and Cost Award is Within the Range of Fees Approved in Comparable Common Fund Cases

Several studies of class action fee awards have found that the median common fund fee award is approximately one-third of the total settlement fund.[11] The requested fee of 1/3 of the gross settlement amount falls within that median common fund fee award, and it constitutes fair compensation for undertaking complex, risky, expensive, uncertain, and time-consuming litigation on a contingent basis and compensates Class Counsel for their efforts, as well as the result achieved for the benefit of the Class. Numerous state and federal courts in California routinely approve fee requests equal to or greater than 33% of the common fund. Indeed, courts have found that an award of 33% of the common fund represents the "benchmark" in California.[12] In short, Class Counsel's fee request of $2,122,875 (which represents 33.33% of the MSA) is in line with awards in similar cases in California and nationwide and demonstrates that Class Counsel's fee request is consistent with market rates and is reasonable.

iii. A Lodestar Cross-Check with a Modest Multiplier Confirms the Reasonableness of the Requested Fee

Class Counsel's fee request is reasonable when calculated using the lodestar method. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent

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[11] *See*, e.g., *Chavez v. Netflix, Inc*. (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that "fee awards in class actions average around one-third of the recovery."); Reagan W. Silber and Frank E. Goodrich, *Common Funds and Common Problems: Fee Objections and Class Counsel's Response*, 17 Rev. Litig. 525, 546; T. Willging, L. Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules*, 90 (1996) (finding that attorneys' fees in class litigation "were generally in the traditional range of approximately one-third of the total settlement").

[12] *Smith v. CRST Van Expedited, Inc*. (S.D. Cal. Jan. 14, 2013) 10-CV-1116- IEG WMC, 2013 U.S. Dist. LEXIS 6049, *14 ("These percentages compare favorably with both California (33%) and federal (25%) benchmarks."); *Dennis v. Kellogg Co*. (S.D. Cal. Nov. 14, 2013) 09-CV-1786-L WMC, 2013 U.S. Dist. LEXIS 163118, at *22 ("This percentage compares favorably with both California (33%) and federal (25%) benchmarks and the requested fee compares well with a lodestar cross-check as well.").

on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20 Cal. 3d 25, 48. The court then enhances this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id*. at 49; *see also Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 834, ("[t]here is no … rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar").

Courts "routinely enhance[] the lodestar to reflect the risk of non-payment in common fund cases." *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051; *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 ("One of the most common fee enhancers […] is for contingency risk."). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys' fees for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino,* 220 F.3d at 1051. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-service basis." *Ketchum*, 24 Cal.4th at 1132. In determining whether or not to enhance or reduce the lodestar, California courts take into account multiple factors, including: the time and labor required; the skill requisite to perform the legal services properly; the preclusion of other employment by the attorney due to the acceptance of the case; the contingent nature of the fee; the amount involved and results obtained; the experience, reputation, and ability of the attorney; and awards in similar cases. *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 822.

Class Counsel has worked 1,352 hours to date on this case and have calculated the lodestar fee on those hours at $974,100 at rates reflecting those currently earned in the marketplace. (Mara Dec. ¶ 17, Ex. 5). All of the work and tasks performed by Class Counsel were reasonable and necessary to the prosecution of this case and are reflected in the result achieved. (Mara Dec. ¶ 18).

This was a highly contested matter which required a significant amount of time and labor. Class Counsel had to investigate and analyze documents and data for Plaintiff and a sampling of Class Members. In addition, as part of the above investigation and analysis, Plaintiff had to marshal the evidence in a manner in which it could be adjudicated on a class-wide basis. So often, lawyers unskilled in the class action aspect of wage and hour cases do not pay attention to or put the work into how the evidence must be presented for class-wide adjudication. Strong class-wide cases perish in the hands of inexperienced counsel because the case has not been worked up to succeed at certification. Class Counsel here has considerable experience in class litigation and, from the beginning of the case, is marshalling the evidence with a sharp focus on class-wide proof needed for the matter to get certified. This case was no different. This filtering of voluminous evidence into class-wide proof while keeping an eye on the merits of the litigation required a considerable amount of attorney time and skill. (Mara Dec. ¶ 19).

Most importantly, all services were performed by Class Counsel on a contingent basis. (Mara Dec. ¶ 20). Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in this case. *See*, *e.g.*, *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal.4th at 1132-33. Here, Class Counsel bore the risk that, in spite of all of their efforts and skill employed, there may be no recovery.

Class Counsel respectfully requests a fee of $2,122,875, which, based on the total attorney hours expended and rates, would require a 2.18 multiplier to raise the generated fees of $974,100 to the requested amount. Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Class Counsel is also reasonable compared to fees awarded in like cases. Courts routinely enhance lodestar amounts based on multipliers that "range from 2 to 4 or even higher."[13] Thus, consideration of the lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested fee award. Class Counsel moves for and respectfully requests that the Court grant attorneys' fees in the amount of $2,122,875.

iv. Class Counsel's Hourly Rates are Reasonable

Class Counsel's hourly rates are between $400 and $850 and are in line with rates typically

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[13] *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 255 (2001); *see, e.g.*, *Vizcaino*, 290 F.3d at 1051 (approving multiplier of 3.65); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 (2d Cir. 2005) (approving multiplier of 3.5); *Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 2008) (awarding multiplier of 5.2 and collecting cases with cross-check multipliers ranging from 4.5 to 19.6); *Glendora Community Redevelopment Agency v. Demeter,* 155 Cal.App.3d 465, 479-80 (1984) (approving fee award with multiplier of 12).

approved in wage and hour class action litigation and which rates have been approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County Superior Courts. (Mara Dec. ¶ 21; Exs. 2-4).

Class Counsel's skill and experience support their hourly rates. Their practice is limited exclusively to litigation, focusing on the representation of employees in wage and hour and consumer class action matters. (Mara Dec. ¶¶ 2-10). As leading attorneys in the field of wage and hour class action litigation, Plaintiff's counsel continually monitors the prevailing market rates charged by both defense and plaintiff law firms and set the billing rates of their attorneys and paralegals/law clerks to be consistent with the prevailing market rates in the private sector for attorneys and staff of comparable skill, qualifications and experience. Therefore, as they are in line with those of the relevant community, Class Counsel's hourly rates are reasonable.

v. Class Counsel's Total Hours are Reasonable

In determining a lodestar fee, reasonable hours include, in addition to time spent during litigation, the time spent before the action was filed, including time spent interviewing clients, investigating the facts and law, and preparing the pleadings. *See New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447. 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*"). Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

Class Counsel has expended a total of 1,352 hours on this case. The Declaration of David Mara and time chart attached thereto, both of which are filed concurrently with this motion, details the substantial work Counsel for Plaintiffs performed to the successful resolution of this matter. (Mara Dec. ¶¶ 22, 27, 32, 35). As shown from the Declaration and attachment, Class Counsel have been intimately involved in directing the progress of this case prior to the commencement of this action and all the way up to the present. Class Counsel's dedication to providing representation in the case has precluded other employment. Class Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. All of the work performed was reasonable and necessary to the prosecution of this case. The work performed was particularly justified, in light of the result achieved.

vi. Costs of Litigation

Class Counsel seeks reimbursement of the litigation costs and expenses of $23,415.11. (Mara Dec. ¶ 39, Ex. 5).These costs were all reasonable and necessary to the prosecution of this case and the results achieved and are fair and reasonable.

c. Requested Enhancement Payment is Fair and Reasonable

Class Counsel seeks approval of the Class Representative Enhancement Payment to the named Plaintiff in the sum of $15,000. The requested enhancement is reasonable in light of the broad general release Plaintiff is giving to Defendants in exchange for the $15,000 payment and the work he performed in this case.

The general release being given by Plaintiff is far greater than the release proposed for Class Members. This payment not only compensates Plaintiff for the work he undertook in this case, but also for the claims and potential claims he may have against Defendants that he is releasing. For example, Plaintiff brought this class action lawsuit to seek recourse for other employees instead of filing an individual case on behalf of merely himself. Since the inception of this case, he has put the Class's interests ahead of his own. This payment compensates Plaintiff for the claims that he forwent bringing for the betterment of the Class Members.

Moreover, as representative for the absent class members, Plaintiff risked a potential judgment taken against him for attorneys' fees and costs if this matter had not been successfully concluded. Case law holds that a losing party is liable for the prevailing party's costs. *See Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000). And in some wage and hour actions, such as this case, pursuant to California Labor Code § 218.5, the prevailing party can be liable for attorneys' fees as well. Though the fee agreement provides that Class Counsel would pay such costs, Plaintiff would nevertheless have had a cost bill entered against him leaving him ultimately liable for potentially hundreds of thousands of dollars in the unexpected possibility that Class Counsel did not meet their obligation to cover those costs. Unfortunately, there have been judgments like this entered against class representatives.[14] The risk of payment of Defendant's

[14] *See*, e.g. *Koehl v. Verio, Inc.*, 142 Cal.App.4th 1313, 1328 (2006) (a wage and hour class action where Defendant

costs, alone, is a sufficient basis for an award of the requested service award. Few individuals are willing to take this risk, and Plaintiff championed a cause on behalf of others with potentially huge monetary risks.

Additionally, the modern-day work force is mobile, with employees holding several jobs over the span of their career. It is also true that prospective employers in this computer, high-tech age "Google" and/or do extensive background checks and have access to court databases to see if applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiff's conduct will not be lost on a prospective employer who has to choose between an applicant who has never sued an employer and one who has done so. The requested award far from compensates Plaintiff for opportunities he may lose in the future because of the exercise of a Constitutional right to Petition the Courts for redress of a grievance.

Courts routinely approve service payments, or incentive awards, to compensate named plaintiffs for the services they provide and the risks they incur during class litigation. See *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers Ins. Exch*. (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the $15,000 payment to the named Class Representative is fair, appropriate and justified as part of the overall settlement.

d. The Administration Costs are Reasonable

The Court-approved Settlement Administrator was responsible for formatting, printing and mailing the Class Notices. The Settlement Administrator was responsible for responding to Class Member inquiries, providing weekly status reports, answering questions from Counsel for the Parties, and providing a declaration to document its duties and responsibilities under the settlement. Plaintiff now requests that the Court finally approve the Settlement Administration Costs in the amount of $59,995 to Apex for services rendered and to be rendered for the notice and settlement administration process. Following the grant of final approval, the Settlement

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prevailed at trial, the named Plaintiffs were held liable, jointly and severally for the Defendant's attorneys' fees); *Whiteway v. Fedex Kinkos Office & Print Services, Inc.,* No. 05-2320, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. Dec. 17, 2007) (a wage and hour misclassification case lost on summary judgment, after the case was certified, the named Plaintiff was assessed costs in the sum of $56,788.).

Administrator's duties will continue in order to calculate and mail the individual settlement payments to Participating Class Members, perform tax reporting obligations, disburse other payments as ordered by the Court, and perform such other duties as set forth in the Agreement.

V. CONCLUSION

Based on the foregoing, Class Counsel respectfully requests the Court grant final approval of the settlement.

Dated: August 6, 2026

MARA LAW FIRM, PC

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Attorneys for Plaintiff KENTON SAMUELS on behalf of himself, all others similarly situated, and on behalf of the general public