JUSTICE FOR WORKERS, P.C.
William C. Sung, SB# 280792
EMail: william@justiceforworkers.com
Tiffany L. Luu, SB# 335127
EMail: tluu@justiceforworkers.com
3600 Wilshire Boulevard, Suite 1815
Los Angeles, CA 90010
Tel: 3239222000
Fax: 3239222000
Attorneys for Plaintiff ANNETTE DEARING

BARVIE LAW, APC
Nicole Barvie, SB#282352
Email: nicole@barvielaw.com
550 W B Street, Fourth Floor
San Diego, CA 92101
Tel: 8582550928
Fax: 8583578592
Attorneys for Plaintiff REBECCA TAYLOR

AIMANSMITH & MARCY
Hallie Von Rock
7677 Oakport Street, Suite 1000
Oakland, CA 94621
Tel: (510) 5191018
hvr@asmlawyers.com
Attorney for Plaintiff JANETTE TELLO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MADERA

ANNETTE DEARING, an individual, REBECCA TAYLOR, an individual, JANETTE TELLO, an individual, on behalf of themsleves, and on behalf of all others similarly situated;

Plaintiffs,

vs.

LOVE'S COUNTRY STORES OF CALIFORNIA, a California corporation; and DOES 1 through 50,

Defendants.

Case No. MCV090813

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, ATTORNEY'S FEES AND COSTS, AND SERVICE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES

(Filed Concurrently with Supporting Declarations and [Proposed] Judgment and Order)

Date: July 27, 2026
Time: 8:30 a.m.
Judge: Hon. Michael J. Jurkovich
Dept.: 411B

Action Filed: November 28, 2023
Trial Date: Not Set

THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court and California Code of Civil Procedure § 382, on July 27, 2026 at 8:30 a.m. in Department 411B of the Madera County Superior Court located at 200 South G Street, Madera, California, 93637, the Honorable Michael J. Jurkovich presiding, Plaintiffs Annette Dearing, Janette Tello and Rebecca Taylor ("Plaintiffs"), individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for entry of an Order:

1. Granting final approval of the Settlement;

2. Approving the modified Gross Settlement Amount of $2,893,399.03[1];

3. Approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement;

4. Approving Plaintiffs' requests for Class Representative Service Payments of $10,000.00 to each Plaintiff, totaling $30,000.00;

5. Approving Plaintiffs' request for an award of attorneys' fees to Class Counsel of one-third (33 1/3%) of the Gross Settlement Amount, *i.e.* $964,466.34, broken down as $385,786.54 to Justice for Workers, P.C., $482,233.17 to Barvie Law, APC, and $96,446.63 to Aiman Smith & Marcy;

6. Approving Plaintiffs' request for reimbursement of litigation costs of $39,895.46, broken down as $14,942.99 to Justice for Workers, P.C., $18,445.93 to Barvie Law, APC, and $6,506.54 to Aiman Smith & Marcy;

7. Approving Plaintiffs' request for payment of settlement administration costs to Apex Class Action LLC in the amount of $29,990.00; and

8. That the Court enter final judgment as to all members of the Class in this action.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to grant final certification of a class for settlement purposes. In light of the overwhelmingly positive response, as shown by the lack of objections and nominal opts-out, there is no question that the settlement is fair,

[1] The Gross Settlement Amount has increased from $2,750,000.00 to $2,893,399.03 because Defendant triggered the Escalator Clause in § 9 of the Agreement and elected to increase the Gross Settlement Amount. Declaration of Elizabeth Botero Bravo, ¶ 15.

reasonable, and adequate and thus should be granted final approval.

This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the supporting declarations of Nicole Barvie, William Sung, Hallie Von Rock, Elizabeth Botero Bravo of Apex Class Action LLC, Plaintiff Rebecca Taylor, Plaintiff Annette Dearing, and Plaintiff Janette Tello, and the exhibits attached thereto; the Agreement; the pleadings, and other papers filed in this Action; and on any further oral or documentary evidence or argument presented at the time of the hearing.

Respectfully submitted,

DATED: June 30, 2026

JUSTICE FOR WORKERS, P.C.

By: ______________________
William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff ANNETTE DEARING

DATED: June 30, 2026

BARVIE LAW, APC

By: */s/ Nicole Barvie*
Nicole Barvie
Attorneys for Plaintiff REBECCA TAYLOR

DATED: June 30, 2026

AIMANSMITH & MARCH

By: */s/ Hallie Von Rock*
Hallie Von Rock
Attorneys for Plaintiff JANETTE TELLO

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a wage and hour class and representative PAGA action arising from Defendant Love's Country Stores of California's ("Defendant") alleged violations of the California Labor Code. Prior to the settlement of this Action, Plaintiffs Annette Dearing, Janette Tello and Rebecca Taylor ("Plaintiffs") and Defendant (collectively, "Parties") thoroughly investigated the facts relating to the claims alleged in the operative Second Amended Complaint against Defendant. The Parties engaged in pre-mediation informal discovery, including time and payroll records for a 25% sampling of Class Members. Thereafter, the Parties participated in a full day of private mediation and were ultimately able to reach the current settlement on a class and PAGA representative basis.

The terms of the settlement provide that Defendant shall pay a Gross Settlement Amount of $2,893,399.03. On average, each of the 3,455 Participating Class Members will receive approximately $501.25. The Parties believe that this amount is fair, adequate, and reasonable, especially given the risks and uncertainty of class certification and the merits of this case.

Further, notice of the settlement was provided to the class by the Administrator in the manner approved by the Court. As of the filing of the Motion, Class Members did not submit a single objection and only one Class Member requested exclusion. Thus, there is a **99.97%** participation rate. With full support of the Class, the Parties respectfully request that the Court grant final approval of the Settlement.

II. THE PAYMENTS TO THE SETTLEMENT CLASS & AGGRIEVED EMPLOYEES

The Settlement initially provided for a Gross Settlement Amount of $2,750,000.00. Agreement, § 3.1[2]. The Settlement includes an Escalator Cause, where if the number of Workweeks during the Class Period exceeded 154,000 by more than 10%, *i.e.*, 169,400 Workweeks, Defendant has the option to either adjust the Class Period end date so the Workweek count stays within 169,400 Workweeks, or increase the Gross Settlement Amount on a pro rata basis for each Workweek over 169,400. Agreement, §§ 4.3, 8. Based on data provided by Defendant, there were 178,233 Workweeks, which is 8,833 Workweeks over the limit. Declaration of Elizabeth Botero Bravo ("Admin Decl."), ¶ 15. Defendant

[2] The Class Action and PAGA Settlement Agreement ("Agreement") is attached as **Exhibit 1** to the Declaration of William C. Sung ("Sung Decl.").

elected to increase the Gross Settlement Amount by $143,399.03 (8,833 Workweeks X $16.23 per Workweek) to $2,893,399.03. *Ibid*.

The entire Gross Settlement Amount is non-reversionary and no monies will revert back to Defendant. Agreement, § 3.1. There are 3,456 Participating Class Members. Admin Decl., ¶ 7. The Net Settlement Amount is estimated to be $1,731,811.62 and is based on:

Gross Settlement Amount	**$2,893,399.03**
Less Class Counsel Fees Payment	($964,466.34)
Less Class Counsel Litigation Expenses Payment	($39,895.46)
Less Class Representative Service Payment	($30,000.00)
Less PAGA Penalties	($100,000.00)
Less Settlement Administration Costs	($29,990.00)
Net Settlement Amount	**$1,731,811.62**

Admin. Decl. ¶ 16.

Pursuant to the terms of the Settlement, Participating Class Members will receive a proportionate share of the Net Settlement Amount based on the total number of Workweeks worked during the Class Period. Agreement, § 3.2(f). Based on settlement calculations at this time, the estimated average payment to each Class Member will be $501.25, with the highest payment to a Class Member estimated to be $2,230.25 and lowest payment to a Class Member estimated to be $1.36. Admin. Decl. at ¶ 17.

The Settlement allocates $100,000.00 to PAGA penalties ("PAGA Penalties"), of which 75%, or $75,000.00 shall be paid to the Labor and Workforce Development Agency ("LWDA"), and 25%, or $25,000.00 to Aggrieved Employees. Agreement, § 3.2(e). Aggrieved Employees will receive a proportionate share of $25,000.00 based on the number of Pay Periods worked during the PAGA Period. *Ibid.* Based on the estimated calculations at this time, the average Individual PAGA Payment to each Aggrieved Employee is estimated to be $8.54 and the highest payment is estimated to be $31.72 and lowest payment is estimated to be $0.02. Admin. Decl. ¶ 19.

III. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT

The Administrator received the Class Data from Defense Counsel that included 3,456 Class Members. Admin Decl. ¶ 5. On or about May 12, 2026, the Administrator mailed the Class Notice via first class mail to each of the persons identified in the class list. Admin Decl. ¶ 7, Exh. A – Class Notice. As part of the administration process, 414 Class Notices were returned, the Administrator successfully remailed 325 Class Notices after conducting a skip trace, and only 89 Class Notices were undeliverable.

Admin Decl. ¶¶ 8-9. Thus, the Class Notice was delivered to approximately 98% of the Class. *See ibid.*

The Class Notice provided Class Members with Class Counsel's contact information, where they could further seek information regarding the Settlement, leave questions for the Administrator, and update their address. Admin Decl., ¶ 7, Exh. A. Notably, no Class Member objected to the Settlement and only one requested exclusion, resulting in a **99.97%** participation rate, and only two Class Members disputed their Workweeks or Pay Periods, which were promptly resolved. Admin Decl., ¶¶ 11-14.

The provision of sending the notice to Class Members as described above meets the requirements for the "best notice practicable" in this case as necessary to protect the due process rights of Class Members. *See Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12 (provision of "best notice practicable" with description of the litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-75 (individual notice must be sent to class members who can be identified through reasonable means). Here, Class Members were provided with a mailing regarding the Settlement that explained the settlement and allowed Class Members to seek information, ask questions, and object, if so desired. As such, proper notice has been given to the Class. The Court may proceed to determine the fairness and adequacy of the settlement and enter its Order granting final approval, secure in the knowledge that all absent Class Members have been given the opportunity to participate fully in the claims, exclusion, and the approval process.

IV. <u>THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE</u>

A. <u>The Terms, Negotiation, and Reception of the Settlement by Class Members Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable</u>

As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 130, 133, a class action settlement should be approved when the plaintiff has conducted sufficient discovery and the settlement is reasonable in light of the strengths of the plaintiff's claims. As discussed in the Motion for Preliminary Approval, Class Counsel have conducted extensive formal and informal discovery and investigation and, in light of the strength and weaknesses of Plaintiffs' claims, Class Counsel submits that this settlement is fair pursuant to *Kullar*.

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The Settlement was the product of a full day mediation and negotiation between highly able and experienced attorneys on both sides. Sung Decl., ¶¶ 4-6. In addition, the resolution of this case was reached only after the production of data relevant to the potential value of the claims. Sung Decl., ¶ 4. Defendant produced (1) a class list with employee numbers, dates of employment, location worked, position, and average hourly rate; (2) a random 25% sampling of employee time and payroll records exported on Excel; (3) Defendant's employee handbook and relevant standalone policies and procedures, including pay codes; and (4) Plaintiffs' personnel files and wage statements. *Ibid.*

Based on the data provided by Defendant, Class Counsel and its expert data scientist performed a comprehensive damage analysis and calculated a range of potential damages and penalties. Sung Decl., ¶ 5. Class Counsel estimated that the potential realistic recovery for the Class would be approximately $4,317,330.63. Sung Decl., ¶ 7. The proposed Settlement of the original Gross Settlement Amount of $2,750,000.00 represented approximately **63.70%** of the reasonably forecasted recovery for the Class. *Ibid.* Final approval is appropriate since the Settlement will provide significant monetary relief to the Class, which is consistent with what Class Counsel believe could have been recovered had the case proceeded through trial. *Ibid.*

The results after mailing of the Class Notice further support confirmation of the Court's preliminary approval of the settlement with final approval of the settlement, as evidenced by the fact that **not a single Class Member objected to the Settlement and only one opted out.** The Court may appropriately infer that the class action settlement is fair, adequate, and reasonable when, among other reasons, few, or no class members object to it. *See Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291; *Churchill Vill. LLC v. Gen. Elec.* (9th Cir. 2004) 361 F.3d 566, 577 (approving settlement with 45 objections and 500 opt-outs from a 90,000-person class, representing 0.05% and 0.56% of the class, respectively); *Chun–Hoon v. McKee Foods Corp*. (N.D. Cal. 2010) 716 F.Supp.2d 848, 852 (where 16 of 329 class members opted out, court found that positive class reaction "strongly supports settlement"). Here, the lack of any objections or opt-outs to this Settlement is an indication that Class Members themselves view the settlement as fair, adequate, and reasonable.

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B. Under Well-Established Legal Principles, the Court Should Grant Final Approval

1. Standard of Review

On a motion for final approval of a class action settlement under California Code of Civil Procedure section 382 and California Rule of Court 3.769, a court's inquiry is whether the settlement is "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625, *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n* (1983) 459 U.S. 1217. A settlement is fair, adequate, and reasonable, and therefore merits final approval, when "the interests of the class are better served by the settlement than by further litigation." *See Manual for Complex Litigation, Fourth*, § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004 ("*Manual*"). The law favors settlement, particularly in class actions and other complex cases, where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See* Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class Plaintiffs* 955 F.2d 1268 at 1276; *Van Bronkhorst v. Safeco Corp*. (9th Cir. 1976) 529 F.2d 943, 950.

Although a court possesses "broad discretion" in determining that a proposed class action settlement is fair, the court's role must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. *See Officers for Justice*, 688 F.2d at 625. A court should give due regard to what is otherwise a "private consensual agreement" between the parties. *Ibid*.; *see also Church v. Consolidated Freightways, Inc*. (N.D. Cal. 1993) 1993 WL 149840; *In re Wash. Pub. Power Supply Sys. Sec. Litig*. (D. Ariz. 1989) 720 F.Supp. 1379, *aff'd sub nom., Class Plaintiffs*, 955 F.2d 1268; *Manual* for Complex Litigation, § 21.6 at 309 ("The judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement").

A court's approval of a class action settlement will only be reversed for a clear abuse of discretion. *See Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801; *Officers for Justice*, 688 F.2d at 626 ("reverse only upon a strong showing that the district court's decision was a clear abuse of discretion"); *Class Plaintiffs*, 955 F.2d at 1276; *Ackerman v. Kassar* (9th Cir. 1993) 1993 WL 326453;

Linney v. Cellular Alaska P'ship (9th Cir. 1998) 151 F.3d 1234, 1238. As the Court of Appeals cautioned:

> "It cannot be overemphasized that neither the trial court in approving the settlement nor this Court in reviewing that approval have the right or duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed settlements, 'the [trial] judge does not try out or attempt to decide the merits of the controversy,' [citation] and the appellate court 'need not and should not reach any dispositive conclusions on the admittedly unsettled legal issue."

7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1146.

2. The Settlement is Presumed to Be Fair

The Court should begin its analysis with the presumption that the settlement is fair:

> [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; *7-Eleven Owners for Fair Franchising*, 85 Cal.App.4th at 1146.

The Settlement warrants approval and carries a presumption of fairness. As previously noted in the Motion for Preliminary Approval, this current settlement was negotiated at arm's length and with the assistance of a neutral mediator. Furthermore, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. Sung Decl., ¶¶ 8-11; Declaration of Nicole Barvie ("Barvie Decl."), ¶ 2, Exh 1; Declaration of Hallie Von Rock ("Von Rock Decl."), ¶ 2, Exh. 1.

3. The Risks Inherent in Continued Litigation Favor Final Approval

To assess the fairness, adequacy and reasonableness of a class action settlement, the Court also should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation. *See also, In re General Motors Corp*. (3d Cir. 1995) 55 F.3d 768, 806 ("present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement"); *Boyd v. Bechtel Corp*. (N.D. Cal. 1979) 485 F.Supp. 610, 616-17.

Here, Defendant has presented defenses to all of Plaintiffs' claims and theories of liability. Sung Decl., ¶ 12. For example, Plaintiffs alleged that Defendant failed to properly factor various types of nondiscretionary incentive compensation, including monthly and quarterly incentives and employee recognition points which are redeemable for merchandise, into the regular rate. *Ibid.* In response, Defendant argued, as reflected in the payroll records, it correctly calculated the regular rate on monthly and quarterly incentive compensation and that the employee recognition points need not be factored into the regular rate. *Ibid.* Defendant further argued that Plaintiffs' damages are grossly inflated and Plaintiffs cannot certify a class because the vast majority of Class Members signed enforceable arbitration agreements with class action waivers (the arbitration defense applies to all of Plaintiffs' claims). *Ibid.*

Plaintiffs alleged that they sometimes worked off the clock without pay because their managers did not want them to record too many overtime hours. Sung Decl., ¶ 13. In response, Defendant argued it has compliant policies that prohibit working off the clock and require all employees to receive wages for all hours worked. Defendant points to the fact that, during the Class Period, Defendant paid Class Members over $3 million in overtime wages and over $60,000 in double time wages. *Ibid.* Defendant thus contended that Plaintiffs' off-the-clock work claim is individualized and not suited for class certification. *See, e.g., Troester v. Starbucks Corporation* (C.D. Cal., Jan. 27, 2020) 2020 WL 553572, at *9 (denying certification of off-the-clock work claim because of individualized inquiries).

Plaintiffs claimed they were sometimes unable to take compliant meal and rest periods due to their workload and were not paid all meal and rest premiums due. Sung Decl., ¶ 14. Defendant countered that it maintained compliant meal and rest period policies and practices throughout the Class Period and always provided compliant meal and rest periods in line with those policies; it paid more than $500,000 in meal period premiums and more $550,000 in rest period premiums during the Class Period as evidence of their superior meal and rest period compliance practices; and Plaintiffs' meal and rest claims are not suited for class certification due to numerous individualized inquiries. *Ibid.*

Plaintiffs alleged they had to use their personal cellphones for work. Sung Decl., ¶ 15. Defendant argued that Class Members work at travel truck stops and had no reason to use their personal cellphones for work, and this claim is not suited for class certification since individual inquiries would be needed to assess why employees used their cellphones and whether the cellphone usage was required or merely out of their own convenience. *Ibid.*

As to Plaintiffs' derivative claims for wage statement and waiting time penalties, Defendant argues that it possessed strong, good faith defenses to Plaintiffs' underlying claims and these claims cannot meet the willfulness standard in Labor Code § 203 or the knowing and intentional standard in Labor Code § 226(e). Sung Decl., ¶ 16. Defendant relied on the California Supreme Court decision in *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065, which held that an employer's good-faith defenses precludes a "willfulness" finding under Labor Code § 203 and a "knowing and intentional" finding under Labor Code § 226(e) for the imposition of penalties. *Ibid.*

The PAGA cause of action is similarly derived from underlying claims for unpaid wages and meal and rest period premiums. Sung Decl., ¶ 17. In addition to Defendant's defenses on the merits as discussed above, Defendant also asserted that the Court would drastically reduce any award of PAGA penalties as "confiscatory." *Ibid*; *see Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 517 (while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law.")

The risks of this case were weighed by Class Counsel and should be considered a significant factor by the Court in its determination of final approval. Sung Decl., ¶ 18. Class Counsel obtained a very substantial settlement for the Class that resulted in a fair recovery which at the same time provides for finality and no risk of costs by the Class Members or the Class Representative. *Ibid.* The Settlement also affords the Class prompt, fair relief, while avoiding significant legal and factual battles that otherwise may have prevented the Class from obtaining any recovery at all. *Ibid.* While Class Counsel believe the Class Members' claims are meritorious and can be successfully litigated, they are experienced and fully understand the inherent risks and uncertainty involved with such matters as the resolution of class certification, the outcome of a potential trial, and the outcome of any appeals that would inevitably follow should the Class prevail at trial. *Ibid.* Because the Settlement provides immediate and substantial relief, without the attendant risks and delay of continued litigation—not to mention the threat of litigation fees and costs—Class Counsel believe that the Settlement warrants the Court's final approval. *Ibid.*

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4. The Complexity, Expense, and Likely Duration of Continued Litigation Against Defendant Favor Final Approval

Another factor considered by courts in approving a settlement is the complexity, expense, and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625. In applying this factor, the Court must weigh the benefits of the settlement against the expense and delay involved in achieving an equivalent or more favorable result at trial. *See Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581;*Young v. Katz* (5th Cir. 1971) 447 F.2d 431, 433-434. As noted above and in the Motion for Preliminary Approval, continued litigation could have led to appeals on a number of issues. On the other hand, the settlement that was reached provides to all Class Members – regardless of their means – fair relief in a prompt and efficient manner. Were the Court to deny final approval, the Class Members would be left without a remedy as a practical matter and courts across the State would have to address the issues presented here in a piecemeal, costly, and time-consuming manner. This settlement is thus consistent with the "overriding public interest in settling and quieting litigation" that is "particularly true in class action suits." *See Van Bronkhorst*, 529 F.2d at 950 (footnote omitted).

5. The Opinion of Experienced Counsel Favors Final Approval

Class Counsel supports the Settlement as fair, reasonable, and adequate, and in the best interest of the Class as a whole. Sung Decl., ¶ 19; Barvie Decl., ¶¶ 7-12; Von Rock Decl. ¶¶ 5-7. Similarly, counsel for Defendant is in favor of this settlement. The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant weight by the Court in its final approval determination. *See Officers for Justice*, 688 F.2d at 625; *Boyd*, 485 F.Supp. at 617; *Linney*, 151 F.3d at 1242.

V. <u>THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED</u>

In recognition of Class Counsel's significant efforts to obtain this recovery for the Class, Class Counsel request an award of attorney's fees and reimbursement of actual and reasonable litigation costs. It has long been recognized that where, as here, litigation has created a common fund for the benefit of persons other than the named plaintiff in a lawsuit, courts have the power to award class counsel their reasonable attorney's fees and expenses out of the fund created. *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal. 5th 480, 503. In *Laffitte*, the California Supreme Court affirmed this tenet, holding:

> We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.

Ibid. (internal citations omitted).

In so doing, the Court recognized the advantages of using the percentage of the common fund method of awarding attorney's fees, including the "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." *Ibid.* The *Laffitte* ruling is consistent with courts nationwide, including the United States Supreme Court, which the California Supreme Court recognized, noting, "[c]urrently, all the circuit courts either mandate or allow their district courts to use the percentage method in common fund cases; none require sole use of the lodestar method [and] [m]ost state courts to consider the question in recent decades have also concluded the percentage method of calculating a fee award is either preferred or within the trial court's discretion in a common fund case." *Id.* at 493-94.

A. <u>The Requested Attorney's Fee Award of a Percentage of the Gross Settlement Amount Is Fair and Reasonable Under the Common Fund Doctrine</u>

Courts have long recognized that when class counsel's efforts result in the creation of a common fund that benefits plaintiffs and unnamed class members, class counsel have an equitable right to be compensated from that fund. *See, e.g., Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Laffitte*, 1 Cal.5th at 488-89 (common fund doctrine "long recognized" under California law). In *Laffitte*, the California Supreme Court upheld the trial court's award of one-third of the settlement amount of $19 million with a 2.13 multiplier and affirmed that "empirical studies show the percentage method with a lodestar cross-check is the most prevalent form of fee method in practice." *Id.* at 496-97. In fact, courts have historically awarded between 25% and 50% of the common fund as attorneys' fees class action settlements. *In re Warner Communications* (S.D.N.Y 1985) 618 F.Supp. 735, 749-50.

Although Class Counsel makes this application on a percentage of the common fund basis, using the lodestar cross-check further demonstrates that the requested fee is extremely reasonable and should be awarded. "A lodestar cross-check . . . provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." *Laffitte*, 1 Cal.5th at 504. In determining a lodestar, reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and law, and preparing the initial pleadings. *See New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. Thus, in class actions with a common fund for the benefit of a class, courts have routinely applied an upward multiplier to class counsel's lodestar where the percentage of the settlement is reasonable.

In *Laffitte*, the Court approved a lodestar cross-check that resulted in a 2.13 multiplier because the trial court properly considered the lodestar multiplier factors in determining whether to apply a multiplier, including the difficulty of the issues in the case, the skill of class counsel, the contingent nature of the case, and the preclusion of other employment. *Laffitte*, 1 Cal.5th at 504. In assessing the reasonableness of counsel's fee request, courts considered relevant factors such as the level of skill necessary, time limitations imposed by the client or other limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1139. "A more difficult legal question typically requires more attorney hours, and a more skillful and experienced attorney will command a higher hourly rate." *Id.* at 1138-1139. "[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorney's skill as reflected in the quality of the work, as well as the attorney's reputation and status." *MBNA America Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th.Supp. 1, 13.

Fee awards in successful wage and hour and other types of class actions typically exceed by multiples the lodestar value of the time spent by counsel. *See e.g. In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (affirming that multiplier of 2.52 was "fair and reasonable"); *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 66 (affirming award of fees 2.5 times lodestar in consumer class action); *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 (noting that multipliers can range from 2 to 4 or even higher); *Glendora Cmty. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming multiplier of 12); *Nat. Gas Anti-Trust Cases I, II, III & IV, No. 4221* (Cal. Super. Ct. Dec. 11, 2006) 2006 WL 5377849, at *4 ("numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding fees."); *Van Vranken v. Atlantic Richfield Co.* (N.D.

Cal. 1995) 901 F.Supp. 294, 299 (holding that a multiplier of 3.6 was well within the acceptable range for fee awards in complicated class action litigation), *see also Newberg on Class Actions*, § 14:03 at 14 (multipliers of up to 4 are common).

Here, Class Counsel requests payment of Class Counsel Fees Payment in the amount of $964,466.34, representing one-third of the Gross Settlement Amount. Agreement, § 3.2.2. Class Counsel's lodestar to date is **$690,731.00** and **895.2** attorney hours, itemized in the following table:

Name	**Laffey Matrix Fee**	**Actual Billing Rate**	**Hours Billed**	**Lodestar**
William C. Sung (15th Year Attorney)	$1,019	$900	239.1	$215,190
Tiffany L. Luu (5th Year Attorney)	$625	$550	78.4	$43,120
Nicole Barvie (14th Year Attorney)	$1,019	$550-$650	237.87	$152,390
Hallie Von Rock (21st Year Attorney)	$1227	$1150	135.4	$155,480
Reed W. L. Marcy (28th Year Attorney)	$1227	$1150	35.9	$41,285
Lisseth Bayona (5th Year Attorney)	$625	$500	165.2	$82,600
Shilesky Montalvo-Cruz (3rd Year Paralegal)	$258	$200	3.33	$666.00
		TOTAL	**895.2**	**$690,731.00**

Sung Decl., ¶¶ 20-22; Barvie Decl., ¶ 22; Van Rock Decl., ¶ 21.

The work performed by Class Counsel include, but are not limited to, numerous meetings with Plaintiffs regarding their work experience and status of the litigation, mediation, settlement, and settlement approval; extensive research and analysis into Defendant's corporate background and litigation history, liability theories, and defenses to Plaintiff Dearing's arbitration agreement; review and analysis of significant amount of documents produced by Defendant via formal discovery and informal pre-mediation production; extensive telephonic and written meet and confer conferences with Defendant's counsel regarding enforceability of Plaintiff Dearing's arbitration agreement, case management, mediation, settlement documents, and settlement approval; extensive meet and confer conferences between Class Counsel regarding joint prosecution, mediation, settlement, and settlement approval, analyzing and recreating Defendant's regular rate analysis based on Plaintiffs' records;

preparation and submission of Plaintiffs' PAGA notice letters; preparation of the Complaints and status conferences; drafting written discovery requests; conducting interviews and phone calls with putative class members who responded to the *Belaire West* Notice regarding their work experiences at Defendant's company, reviewing numerous employee files, and payroll records, working with an expert data scientist to analyze the records, and preparation of a damages model; conducting independent analysis of the pre-mediation to verify the expert's analysis; research and preparation of Plaintiffs' mediation brief and participation in mediation; negotiating multiple drafts of the Memorandum of Understanding, Agreement, and attachments thereto; research, preparation, finalization, and filing Motion for Preliminary Approval, Motion for Final Approval, and accompanying filings; preparing for and attending hearings on these Motions; and overseeing the notice administration process and distribution of funds; communications with Class Members regarding the Settlement, notice administration, and settlement approval. Sung Decl., ¶ 22, Barvie Decl., ¶¶ 7-10, 23; Von Rock Decl., ¶¶ 5-6.

Additionally, Class Counsel estimate they will devote no less than 10 hours, although likely more time, to additional tasks, which are hours not included in the foregoing lodestar total. Sung Decl., ¶ 23. These additional hours will include time spent to obtain and monitor approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries from Class Members, and communicate with Plaintiffs regarding the case. *Ibid.*

Thus, Class Counsel's requested fee award of $964,466.34 represents a **1.40** lodestar multiplier against their lodestar of $690,731.00. Sung Decl., ¶ 24. Said multiplier is under the 2.13 multiplier approved in *Laffitte* and the recognized multiplier range between 2 and 4. *See In re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th at 512 (affirming that multiplier of 2.52 was "fair and reasonable"); *Chavez*, 162 Cal.App.4th 43 at 66 (affirming award of fees 2.5 times lodestar in consumer class action); *Wershba*, 91 Cal.App.4th at 255 (noting that multipliers can range from 2 to 4 or even higher). For these reasons, Class Counsel respectfully requests this Court approve a fee award of $964,466.34.

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B. <u>The Requested Fee Award is Fair and Reasonable Under Other Factors</u>

Although no rigid formula applies, an analysis of each of the following "basic factors" that California courts typically consider further supports the reasonableness of a fee request: (1) the result class counsel obtained; (2) the time and labor required of the attorneys; (3) the contingent nature of the case and the delay in payment to class counsel; (4) the extent to which the nature of the litigation precluded other employment by class counsel; (5) the experience, reputation, and ability of the attorneys who performed the services, the skill they displayed in the litigation, and the novelty, complexity and difficulty of the case; and (6) the informed consent of the clients to the fee agreement. *Serrano v. Priest* (1977) 20 Cal.3d 25, 49; *Dunk*, 48 Cal.App.4th at 1810, n.2.

1. The Results Achieved

Courts have consistently recognized that the results achieved are an important factor to be considered in making a fee award. *Hensley v. Eckerhart* (1983) 461 U.S. 424, 436 ("most critical factor is the degree of success obtained"). Here, because Class Counsel invested significant time and expense successfully prosecuting Plaintiffs' claims, significant monetary relief is to be provided to the Class and the excellent results achieved by Class Counsel through this Settlement alone justify the requested fee award. As discussed above, the original Gross Settlement Amount of $2,750,000.00 represented approximately 63.70% of the reasonably forecasted recovery for the Class. Sung Decl., ¶ 7.

The 3,455 Participating Class Member will receive an average Individual Class Payment of $501.25 from an estimated Net Settlement Amount of $1,731,811.62. Admin Decl., ¶ 16. This represents an excellent recovery for the Class considering Defendant's vigorous defense and the risks of continued litigation. Notably, after being provided with notice of the Settlement and the requested Class Counsel Fees Payment, there were no objections and only one opt-out by the Class. Admin Decl., ¶¶ 11-12.

As discussed above, Defendant presented a host of defenses, both legal and factual, which potentially could have fragmented the Class into much smaller subclasses, significantly limited the recovery potential for the Class, and dragged the litigation out for years to come. Sung Decl., ¶¶ 12-17. Thus, in reaching this Settlement, Class Counsel carefully considered the strength of the case versus the amount offered in settlement, as well as the risk, expense, and complexity of maintaining class certification through trial. Sung Decl., ¶ 25. While Class Counsel is confident about the strength of Plaintiffs' claims, they recognize that Defendant has factual and legal defenses that, if successful, would potentially defeat or substantially impair the value of the lawsuit. *Ibid*.

Thus, continuing to litigate this action would require continued and extensive resources coupled with significant court time to proceed through contested certification, trial, and post-trial motions, which can often take years. Sung Decl., ¶ 26. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. *Ibid*. But even if Plaintiffs were successful at trial, Class Counsel are acutely aware that a judgment does not end the litigation, and they fully expect that Defendant would likely appeal any judgment. *Ibid*. Having litigated every stage of complex wage and hour actions, including trying a class action to verdict, litigating motions for class certification and summary judgment, and briefing and arguing appeals before appellate courts, Class Counsel is acutely aware of these risks. *Ibid; see also Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668 (reversal of a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer); *O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action).

Considering these issues, the original Gross Settlement Amount of $2,750,000.00 for a Class of 3,456 employees is an excellent result. Furthermore, the Class greeted news of the Settlement with 99.97% of the Class Members participating in the Settlement. The unanimous approval by the Participating Class Members evidences the positive overall result of the litigation.

2. The Significant Amount of Time Spent and the Quality of the Labor Performed by Class Counsel Justifies the Requested Fee

Class Counsel worked hard on this case and, expended approximately 895.2 attorney hours in the prosecution of this litigation in the two-plus years since it was filed for a total lodestar of $690,731.00. Moreover, Class Counsel expects to incur an additional 10 hours of work attending the hearing on final settlement approval, administering the settlement, filing post distribution settlement declaration, and, if needed, drafting an amendment judgment. Class Counsel devoted considerable time and effort to achieve the benefit to the Participating Class and the requested attorney's fee award is appropriate here given the excellent results achieved.

3. The Contingent Fee and the Financial Burden Borne by Class Counsel

Class Counsel undertook this litigation on a contingent-fee basis, assuming a significant risk that the litigation would yield no recovery after many years of work. Sung Decl., ¶ 27. Unlike defense attorneys who are paid an hourly rate and reimbursed for their expenses on a regular basis, Class Counsel has not been compensated for any time or expenses to date. An attorney whose compensation is dependent on success should expect a significantly higher fee than an attorney who is paid a market rate as the case goes along, win or lose. *Cazares v. Saenz* (1989) 208 Cal.App.3d 279, 288. As the California Supreme Court in *Ketchum* explained, "[a] contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans." *Ketchum*, 24 Cal.4th at 1132-33.

Traditionally, employment litigation plaintiffs are unable to pay their attorneys on an hourly basis and thus can obtain representation only if they can find counsel who are willing to accept their case on a contingent basis and agree to advance either all or a significant portion of the costs. Sung Decl., ¶ 27. At the same time, most plaintiff's attorneys are neither able nor willing to accept such contingent cases unless they can anticipate that they will recover a fee greater than they would have recovered if paid on an hourly basis if they prevail after time-consuming and expensive litigation. *Ibid.* Plaintiffs' attorneys, especially in class actions, face the risk that even if they are successful in litigating a case through trial, that Defendant could be judgment-proof, raising the possibility that Class would receive no payment at all. *Ibid.* For this reason, courts have long recognized "contingent risk" as a factor supporting an upward enhancement of the lodestar. *See e.g., Serrano*, 20 Cal.3d at 49. The simple fact is that despite the most vigorous and competent efforts, success is never guaranteed. Plaintiffs' attorneys not only must turn away other income-generating opportunities but must take on a substantial risk of "never receiving compensation at all." *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, 1217-18.

Finally, in taking this case on a purely contingency basis, Class Counsel had to turn away other fee generating work because the case required Class Counsel to not only devote considerable time and resources to effectively prosecute and settle this action, but also wait until the Settlement is fully funded before finally being made whole. Sung Decl., ¶ 29.

4. The Requested Fees Matches the Market Rate in Similar Litigation.

Class Counsel's one-third fee request of the Gross Settlement Amount falls within the range of reasonable attorney's fee awards by California courts. In *Laffitte*, the Supreme Court upheld a fee award of one-third of the common fund with a 2.13 multiplier as "within a historical range of 20 to 50 percent of a common fund." *Laffitte*, 1 Cal.5th at 487; *see also Chavez*, 162 Cal.App.4th at 66-67 (approving a 2.5 multiplier, citing *Wershba's* acceptable range, and applying a percentage of recovery cross-check based on a normal marketplace contingency fee range of 20-40% of the recovery to support said multiplier). Here, the requested attorney's fee award of one-third of the common fund is a reasonable arrangement to obtain competent counsel in the marketplace for representation in wage and hour class actions of this nature and consistent with percentage-of-common-fund fee awards that Class Counsel have received across multiple courts within the State of California. *See* Sung Decl., ¶ 11; Barvie Decl., ¶¶ 2, 15-22; Von Rock Decl., ¶¶ 15-18.

5. The Skill, Experience, Reputation, Ability, and Quality of Counsel.

The skill, experience, reputation, quality, and ability of the attorneys who prosecuted this case also support the requested fee award. Practice in the specialized area of wage and hour class action litigation requires skill, knowledge, and experience in two distinct subsets of the law. Expertise in one does not necessarily translate into expertise in the other and a class counsel must have expertise in both. Here, Class Counsel possesses significant experience litigating complex wage and hour class actions and the way this Settlement was achieved is demonstrative of the highly efficient way this litigation was managed and resolved. Sung Decl., ¶¶ 8-11; Barvie Decl., ¶2, Exh. 1; Von Rock Decl., ¶ 2, Exh. 1.

Thus, under the "common fund" doctrine, Plaintiffs' request for attorneys' fees in the amount of one-third of the Gross Settlement Amount is reasonable, justified and appropriate, because (1) it is within the range routinely awarded as attorneys' fees in similar cases; (2) it is supported by the high quality of Class Counsel's work on this case and the results obtained for the Class; (3) it is supported by the fact that this case was handled on a contingency basis and was undertaken despite various risks and expenses; and (4) no class members objected to the requested attorneys' fees.

VI. THE COURT SHOULD APPROVE THE REQUEST FOR ATTORNEY'S COSTS

The request for of costs in the amount of $39,895.46 is fair and reasonable. Pursuant to the Settlement, Plaintiffs may seek reimbursement of litigation costs up to a maximum of $65,000.00. To date, Class Counsel have expended $39,895.46 in litigation related costs. Sung Decl., ¶ 17, Exh. 2; Barvie Decl., ¶ 25, Exh. 2; Von Rock Decl., ¶ 23, Exh. 2. As such, this request should be approved.

VII. THE REQUESTED SERVICE PAYMENTS SHOULD BE APPROVED

Plaintiffs requested, and Defendant does not oppose, a Class Representative Service Payment of $10,000.00 to each Plaintiff, totaling $30,000.00, pursuant to the terms of the Settlement. Courts have routinely granted approval of settlements containing such enhancements. *See e.g., Herrera v. Federal Express Corporation* (C.D. Cal. March 31, 2020) 2020 WL 2951122 at *7 (noting that case law supports enhancements of $10,000); *Potter v. Big Text Trailer Manufacturing, Inc.* (C.D. Cal. March 20, 2020) 2020 WL 1942619 at *10 (awarding $10,000 enhancement where plaintiff spent 30-40 hours on the matter and entered into a general release); *Smith v. Experian Information Solutions, Inc.* (C.D. Cal. Nov. 9, 2020) 2020 WL 6689209 at *7; *Aikhan v. Goodrich Corporation* (C.D. Cal. June 25, 2020) 2020 WL 49191382 at *9; *Thomas v. Cognizant Technology Solutions U.S. Corporation* (C.D. Cal. June 24, 2013) 2013 WL 12371622 at *9; *Djukich v. AutoNation, Inc.* (C.D. Cal. Nov. 12, 2015) 2015 WL 13756099 at *14.

Plaintiffs request that this Court approve the Class Representative Service Payments in light of the efforts Plaintiffs put into this case, the absence of any objection to the Service Payments, and the excellent result achieved. As shown in Plaintiffs' supporting declaration, Plaintiffs spent a significant amount of time engaging in discussions with Class Counsel regarding the case, searching for documents relating to their claims, reviewing various files and pleadings in this case, and reviewing the Settlement. *See* Declarations of Annette Dearing, ¶ 4; Rebecca Taylor, ¶ 5-6; and Janette Tello, ¶¶ 5-6.

In addition to the invaluable services they provided, Plaintiffs also took a significant risk, both professionally and monetarily, in acting as the Class Representative. Sung Decl., ¶ 31. Filing a lawsuit against one's employer carries an inherent reputational risk. *Ibid.* Given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiffs could face negative employment prospects in the future. *Ibid.* These risks can deter employees from asserting their rights. *Ibid.* Additionally, because the claims alleged by Plaintiffs involved the payment of costs to the prevailing party, Plaintiffs could have possibly faced paying the costs of Defendant had they not prevailed in this action. *Ibid.* Despite this, however, Plaintiffs agreed to pursue this case on behalf of the Class. *Ibid.* Moreover, there were no objections by any Class Member to the proposed Class Representative Service Payments. *Ibid.* For such reasons, Plaintiffs respectfully request that this Court approve the award of the Class Representative Service Payments.

VIII. THE SETTLEMENT ADMINISTRATOR'S FEES SHOULD BE APPROVED

Pursuant to the terms of the Settlement, the fees and costs of the Administrator, Apex Class Action LLC, are to be paid out of the Gross Settlement Amount. In total, the settlement administration costs total $29,990.00. *See* Admin. Decl. ¶ 20. Thus, settlement administration fees in the amount of $29,990.00, as agreed to in the Settlement, should be approved.

IX. NOTICE HAS BEEN PROVIDED TO THE LWDA

On June 30, 2026, Class Counsel served the LWDA with the Court's Order Granting Preliminary Approval, this Motion, the Proposed Judge and Order, and supporting declarations via online filing. Sung Decl. ¶ 32. The LWDA has not responded or objected to the Settlement. *Ibid.*

X. CONCLUSION

For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiffs respectfully submit that the standards for final approval have been met, and the terms of the Settlement are fair, adequate and reasonable. Accordingly, Plaintiffs respectfully request that the Court enter an Order in the form proposed and submitted:

1. Granting final approval to the proposed Settlement;

2. Approving distribution of the Gross Settlement Amount pursuant to the terms of the Settlement;

3. Approving Plaintiffs' request of Class Representative Service Payments with payment pursuant to the terms of the Settlement;

4. Approving Plaintiffs' request for an award of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment with payment pursuant to the terms of the Settlement;

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5. Approving Plaintiffs' request for payment of the settlement administration costs with payment pursuant to the terms of the Settlement; and

6. Entering judgment as to all members of the Settlement Class in this action; and Setting a Compliance Hearing date.

Respectfully submitted,

DATED: June 30, 2026

JUSTICE FOR WORKERS, P.C.

By:______________________________________
William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff ANNETTE DEARING

DATED: June 30, 2026

BARVIE LAW, APC

By: *<u>/s/ Nicole Barvie</u>*_______________
Nicole Barvie
Attorneys for Plaintiff REBECCA TAYLOR

DATED: June 30, 2026

AIMANSMITH & MARCH

By: *<u>/s/ Hallie Von Rock</u>*_____________
Hallie Von Rock
Attorneys for Plaintiff JANETTE TELLO