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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO – COMPLEX CIVIL**

DUSTIN SMITH, on behalf of himself and all
others similarly situated, and the general
public,

Plaintiff,

vs.

UNITED SEATING AND MOBILITY,
L.L.C., a Missouri corporation; NUMOTION,
a business entity of unknown form; and
DOES 1 through 50, inclusive,

Defendant.

Case No.: 24CV010038

*[Assigned for All Purposes to the Honorable
Lauri A. Damrell, Dept. 8B]*

CLASS ACTION

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT AND REQUEST FOR
ATTORNEYS’ FEES, COSTS, AND
CLASS REPRESENTATIVE SERVICE
PAYMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Honorable: Lauri A. Damrell
Dept.: 8B
Date: September 18, 2026
Time: 9:00 A.M.

Action filed: May 21, 2024
FAC filed: November 5, 2025
Trial date: None Set

1 **TO THE HONORABLE COURT, ALL INTERESTED PARTIES, AND THEIR**
2 **RESPECTIVE COUNSEL OF RECORD:**

3 PLEASE TAKE NOTICE that on September 18, 2026, at 9:00 a.m. in Department 8B of
4 the Sacramento County Superior Court, located at 500 G Street, Sacramento, CA, 95814, Plaintiff
5 DUSTIN SMITH (“Plaintiff”), on behalf of himself and other similarly situated employees of
6 Defendant UNITED SEATING AND MOBILITY, LLC dba NUMOTION (“Defendant”,
7 collectively with Plaintiff, “the Parties”), will and hereby do move this Court pursuant to
8 California Code of Civil Procedure § 382 and California Rule of Court 3.769 for an order of final
9 approval of the class action settlement, which will accomplish the following: certify the class for
10 settlement purposes only; approve the class action settlement embodied in the Parties’ Class
11 Action and PAGA Settlement Agreement (“Settlement Agreement” or “Settlement”); confirm
12 Plaintiff as the Class Representative; confirm the appointment of Class Counsel; approve Class
13 Counsel’s application for attorney’s fees and litigation costs; approve the service payment to the
14 Class Representative; and enter judgment approving the class action settlement.

15 The Motion will be made on the grounds that the proposed Settlement is fair, adequate,
16 reasonable, and in the best interest of the Plaintiffs and all Class Members.

17 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
18 and Authorities, the Declaration of Class Counsel, and exhibits thereto, including the Declaration
19 of Tarus Dancy for Apex Class Action, LLC and all other papers and records on file in this action,
20 and on such oral and documentary evidence as may be presented at the hearing on this Motion.

21
22 Dated: August 26, 2026

D.LAW, INC.

23
24 By: _____

David Keledjian, Esq.

David Arakelyan, Esq.

Attorneys for Plaintiff, DUSTIN SMITH,
on behalf of himself and others similarly situated

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Class Counsel has achieved a fair, reasonable, and adequate result in this litigation,
4 reflected in the Class Action and PAGA Settlement Agreement (collectively the “Settlement” or
5 “Settlement Agreement”). The response of the 213 Participating Class Members shows that the
6 settlement is in the best interests of the class: no Class Members opted out or objected to the
7 Settlement. The *highest* estimated Individual Class Payment is approximately \$4,458.90, the
8 *average* Individual Class Payment is currently estimated to be approximately \$2,068.86, and the
9 *lowest* Individual Class Payment is currently estimated to be approximately \$21.23. The
10 settlement of this action is fair, reasonable, and adequate. Accordingly, final approval should be
11 granted.

12 **II. RELEVANT BACKGROUND**

13 On February 29, 2024, Plaintiff filed a class action complaint alleging causes of action
14 against Defendant for (1) Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and
15 1198); (2) Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198); (3) Failure to
16 Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
17 (4) Failure to Pay Proper Sick Pay (Lab. Code § 246); (5) Failure to Provide Accurate Written
18 Wage Statements (Lab. Code §§ 226(a)); (6) Failure to Timely Pay All Final Wages (Lab. Code
19 §§ 201, 202, and 203); (7) Failure to Indemnify (Lab. Code § 2802); and (8) Unfair Competition
20 (Bus. & Prof. Code §§ 17200 *et seq.*) (“Class Action”) in the Orange County Superior Court, Case
21 No. 30-2024-01383316-CU-OE-CXC. Plaintiff simultaneously gave timely written notice to
22 Defendant and California’s Labor and Workforce Development Agency (“LWDA”) by sending
23 the PAGA Notice on February 29, 2024 (LWDA-CM-1014005-24), attached hereto as Exhibit 2.
24 On May 21, 2024, after the 65-day statutory period had passed, Plaintiff filed his PAGA-only
25 complaint for claims for penalties under PAGA, Labor Code §2698, in Sacramento Superior Court,
26 where it was assigned case number 24CV010038 (“Action”). (Declaration of David Arakelyan
27 [“Arakelyan Decl.”], ¶ 3, filed herewith.)

28 On April 10, 2024, the Class Action was removed to the United States District Court for

1 the Central District, where it was assigned a Case No. 8:24-cv-00747. On March 24, 2025, the
2 federal court entered an order granting the Parties’ joint stipulation to stay the action pending
3 settlement approval in this Court. (*Id.* at ¶ 4.)

4 Durin the course of this litigation, Class Counsel devoted substantial time and resources
5 to investigating the factual and legal issues presented by the Action, including engaging in
6 informal exchange of information and reviewing documents and information produced by
7 Defendant. The Parties agreed to participate in mediation and informally exchanged information
8 and documents, including data in the Class Period. (*Id.* at ¶¶ 7 – 8.) Prior to mediation, Defendant
9 provided extensive documentation of its policies and practices and data related to the claims
10 asserted in this case, including pay and time data for a representative sample of Class Members
11 and the necessary policy documents through informal discovery to properly evaluate the strengths
12 and weakness of the claims and engage in meaningful settlement discussions. (*Id.* at ¶ 9.)

13 On February 19, 2025, the Parties mediated this case with Mediator Lisa Klerman, Esq.,
14 a respected and highly experienced mediator in wage and hour class actions. (*Id.* at ¶ 11.)

15 The mediation resulted in a Gross Settlement Amount of \$835,000.00 (“Gross Settlement
16 Amount”), on a class wide and PAGA representative basis. (*Id.* at ¶ 13.) The Settlement
17 Agreement defines “Class” as all current and former non-exempt employees employed by
18 Defendant in California during the Class Period (or if any such person is incompetent, deceased,
19 or unavailable due to military service, the person’s legal representative or successor in interest
20 evidenced by reasonable verification) except for any such individual who submits a timely and
21 valid request for exclusion from the release of the class claims as outlined in the Settlement
22 Agreement. The Class Period is further defined as the time period from March 1, 2021, through
23 March 7, 2025. It shall be an opt-out Class. The Settlement Agreement defines PAGA Group
24 Members (also, “Aggrieved Employees”) to mean current and former non-exempt employees of
25 Defendant employed in California at any time during the PAGA Period, which is March 1, 2023,
26 to March 7, 2025 (the “PAGA Period”). (*Id.* at ¶ 14.)

27 ///

28 ///

III. THE SETTLEMENT

A. Benefit to the Class

The *highest* estimated Individual Class Payment is approximately \$4,458.90, the *average* Individual Class Payment is currently estimated to be approximately \$2,068.86, and the *lowest* Individual Class Payment is currently estimated to be approximately \$21.23. Pursuant to the Agreement, 25% of the PAGA Payment (\$20,000.00) will be allocated to Aggrieved Employees regardless of whether they opt out of the class settlement. Aggrieved Employees cannot opt out of the PAGA settlement. There are 147 Aggrieved Employees who worked a total of 5,300 pay periods during the PAGA Period. The highest Individual PAGA Payment is approximately \$203.77, the average Individual PAGA Payment is approximately \$136.05, and the lowest Individual PAGA Payment is approximately \$3.77. (Arakelyan Decl., ¶ 14, Ex. 3 - Declaration of Tarus Dancy from Apex [“Dancy Decl.”], ¶¶ 16-18.)

Additional proposed disbursements are as follows:

- 1) Class Counsel Fees Payment: \$278,333.33
- 2) Class Counsel Litigation Expenses Payment: \$21,790.57
- 3) Administration Costs: \$6,000.00
- 4) Class Representative Service Payment: \$5,000 to Plaintiff Dustin Smith
- 5) PAGA Penalties: \$80,000 (LWDA Portion: \$60,000)

After the above deductions from the Gross Settlement Amount of \$835,000.00, the Net Settlement Amount to be distributed to Participating Class Members is estimated to be \$443,876.10. (*Id.*, Ex. 3 ¶ 16.)

B. Preliminary Approval of Settlement and Notice Procedure

On April 3, 2026, the Court granted Preliminary Approval of this settlement, approved the Revised Notice of Class Action and related forms, appointed Plaintiff Dustin Smith as the Class Representative, appointed Class Counsel, approved Apex Class Action, LLC (“Apex”) as the Administrator, and set timelines for the settlement administration process, pursuant to the Settlement Agreement. (Arakelyan Decl., ¶ 17.)

1 On or about April 5, 2026, Apex received the Court-approved Notice of Class Action
2 Settlement (the “Class Notice”), from the Parties. (Arakelyan Decl., Ex. 3 – Dancy Decl., ¶ 4.)
3 The Class Notice advised Class Members of their right to opt out of the settlement, object to the
4 settlement, dispute the quantity of Workweeks, or do nothing, and the implications of each such
5 action. The Class Notice also advised Class Members of applicable deadlines and other events,
6 including the date of the Final Approval Hearing, and how Class Members could obtain additional
7 information. (*Id.*)

8 On or about May 4, 2026, counsel for Defendant provided Apex with the Class Data file
9 containing Class Members’ names, last known mailing addresses, Social Security numbers,
10 workweeks, and PAGA weeks for each Class Member (“Class Data”). The Class Data contained
11 records for 213 individuals identified as Class Members. (Arakelyan Decl., Ex. 3 – Dancy Decl.,
12 ¶ 5.)

13 In preparation for the mailing, Apex conducted a National Change of Address (“NCOA”)
14 search in an attempt to update the class list of addresses as accurately as possible. A search of this
15 database provides updated addresses for any individual who has moved in the previous four (4)
16 years and notified the U.S. Postal Service of their change of address. The NCOA contains changes
17 of addresses filed with the USPS. If any individual had filed a USPS change of address request,
18 the address listed with the NCOA was utilized in connection with the mailing of the Notices.
19 (Arakelyan Decl., Ex. 3 – Dancy Decl., ¶ 6.)

20 On June 3, 2026, Phoenix mailed the Class Notices via First Class U.S. Mail to 213 Class
21 Members. The Class Notice advised Class Members that they could submit an exclusion,
22 objection and/or dispute postmarked by July 20, 2026. (Arakelyan Decl., Ex. 3 – Dancy Decl., ¶¶
23 7, 10 – 12.)

24 Apex performed 13 address traces on Class Notices returned as undeliverable for the first
25 time. Of the thirteen (13) Notices that were skip traced, eleven (11) updated addresses were
26 obtained and the Notice was promptly re-mailed to those Class Members via first class mail. As
27 of this date, two (2) Class Notices were returned by the Post Office with forwarding addresses.
28 (Arakelyan Decl., Ex. 3 – Dancy Decl., ¶¶ 8.)

1 The deadline for Class Members to submit a Request for Exclusion, object to the
2 settlement, or dispute pay periods and/or workweeks was July 20, 2026. Re-mailed Class Notices
3 were provided with an extended deadline of 14 days. The latest extended deadline was August 3,
4 2026. (Arakelyan Decl., Ex. 3 – Dancy Decl., ¶ 10 – 13.) As of this date, Apex has received zero
5 (0) requests for exclusion, zero objections, and zero disputes regarding employment information
6 from Class Members. (*Id.*)

7 **IV. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

8 A class action cannot be dismissed or compromised without court approval and notice of
9 any proposed dismissal or compromise must be given to all class members as directed by the
10 court. (*La Sala v. Am. Sav. & Loan Assn.* (1971) 5 Cal.3d 864, 872; see Code Civ. Proc. § 1781(f).)
11 In deciding whether to grant final approval to a proposed class action settlement under Code of
12 Civil Procedure section 382, a court’s overriding concern is whether the proposed settlement is
13 “fair, adequate, and reasonable.” (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794,
14 1801.)

15 **A. The Settlement is Entitled to a Presumption of Fairness.**

16 A presumption of fairness exists where: (1) a settlement is reached through arm’s length
17 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
18 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
19 is small. (*Dunk v. Ford Motor Company, supra*, 48 Cal.App.4th at p. 1802.)

20 To prevent fraud, collusion, or unfairness to the class, the settlement or dismissal of a class
21 action requires court approval. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103
22 Cal.App.3d 573, 578-579.) The purpose of the requirement is the protection of those class
23 members, including the named plaintiff, whose rights may not have been given due regard by the
24 negotiating parties. (*Officers for Justice v. Civil Serv. Com’n of City and County of San Francisco*
25 (1982) 688 F.2d 615, 624.) The trial court has broad powers to determine whether a proposed
26 class action settlement is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434.)

27 At the Final Approval hearing, the Court should consider the relevant factors, such as the
28 strength of the plaintiff’s case, the risk, expenses, complexity, and likely duration of further

1 litigation, the risk of maintaining class action status through trial, the amount offered in
2 settlement, the extent of discovery completed and the stage of the proceedings, the experience
3 and views of counsel, and the reaction of the class members to the proposed settlement. (*Officers*
4 *for Justice, supra*, 688 F.2d at p. 624.) “This list is not exhaustive and should be tailored to each
5 case. Due regard should be given to what is otherwise a private consensual agreement between
6 the parties.” (*Dunk, supra*, 48 Cal.App.4th at p. 1801.)

7 **B. The Settlement Was Reached Through Arm’s Length Negotiations**

8 This settlement was reached through arms-length negotiations with an experienced, highly
9 regarded neutral mediator, who is very familiar and experienced with this type of class action in
10 its substance and procedure. The Parties ultimately agreed on the Settlement through the mediator.
11 (Arakelyan Decl., ¶ 8.)

12 **C. Sufficient Discovery and Investigation Have Been Completed.**

13 The stage of the proceedings and the amount of discovery completed when the settlement
14 was reached are important factors in determining the fairness, reasonableness, and adequacy of a
15 settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

16 Prior to mediation, Class Counsel devoted substantial time and resources to investigating
17 the factual and legal issues presented by the Action. Counsel conducted a comprehensive
18 evaluation of Plaintiff’s claims, researched the applicable wage and hour law, analyzed
19 Defendant’s anticipated defenses, and assessed the risks and potential value of the claims. These
20 efforts required significant attorney time and professional judgment and enabled Class Counsel
21 to develop a thorough understanding of the factual record and the legal issues before participating
22 in settlement negotiations. (Arakelyan Decl. ¶ 7.) As a result of this work, Class Counsel entered
23 mediation with sufficient information to meaningfully evaluate the strengths and weaknesses of
24 the case, accurately assess the risks of continued litigation, and negotiate a favorable settlement
25 on behalf of the Settlement Class. The settlement was therefore the product of informed, arm’s-
26 length negotiations rather than an early or uninformed compromise. (*Id.* ¶ 8.)

27 In advance of mediation, Class Counsel conducted a thorough investigation into the facts
28 of, and applicable law to, the Action, including engaging in informal discovery. Prior to

1 mediation, Defendant provided extensive documentation of its policies and practices and data
2 related to the claims asserted in this case, including pay and time data for a representative sample
3 of Class Members and the necessary policy documents through informal discovery to properly
4 evaluate the strengths and weakness of the claims and engage in meaningful settlement
5 discussions. Plaintiff hired Berger Consulting Group (“BCG”), an expert data analysis group to
6 prepare damage calculations and an exposure analysis for the mediation. Plaintiff’s investigation
7 was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Ford Motor Company,*
8 *Inc.*, (1996) 48 Cal.App.4th 1794 and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116,
9 129-130 (2008) (“*Dunk/Kullar*”). (*Id.* ¶ 9.)

10 Based on that experience, the information produced by Defendant, and the expert’s
11 calculations, Class Counsel was able to negotiate a sizable recovery for the Class Members.

12 **D. Class Counsel is Experienced and Endorses the Settlement.**

13 Experienced counsel, operating at arm’s length, have weighed all of the foregoing factors
14 and endorse the proposed settlement. The view of the attorneys actively conducting the litigation
15 is “entitled to significant weight.” (*Fisher Bros. V. Cambridge-Lee Industries, Inc.* (E.D. Pa. 1985)
16 630 F.Supp.482, 488.) “The recommendations of plaintiffs’ counsel should be given a
17 presumption of reasonableness.” (*In re Omnivision Techs., Inc.* (N.D. Cal. 2008) 559 F. Supp. 2d
18 1036, 1043; see *Dunk, supra*, 48 Cal.App.4th at p. 1801.)

19 Class Counsel has extensive experience in class actions and employment litigation, and
20 specifically in wage and hour class actions. (ArakelyanDecl., ¶¶ 42-54.) Class Counsel is
21 experienced and qualified to evaluate the class claims and viability of the defenses. (*Id.*) The
22 recovery for each Class Member is substantial, given the risks inherent in litigation and the
23 defenses asserted.

24 Class Counsel remain convinced the Settlement is in the best interest of the Class based
25 on a detailed knowledge of the issues, risks of loss, and the negotiations. Nothing has changed
26 since the Court granted Preliminary Approval of the Settlement to negate the presumption of
27 fairness. The affirmative defenses asserted by Defendant, the uncertainty of achieving
28 certification, the prospect of a potential adverse summary judgment ruling, the difficulties of

1 complex litigation, the lengthy process of establishing specific damages, and the perils of
2 litigation affecting the value of the claims, as well as the risks of loss at trial and the various
3 possible delays and appeals were carefully considered by Class Counsel in arriving at the
4 proposed Settlement. (Arakelyan Decl. ¶ 25.) Thus, this Settlement is fair, adequate, and
5 reasonable and in the best interests of the Class.

6 **V. THE COURT SHOULD APPROVE THE REQUESTED ATTORNEYS' FEES**

7 **A. Plaintiffs Are Entitled to Attorneys' Fees Under California Law.**

8 California law, the court is empowered to award reasonable attorneys' fees and costs when
9 a litigant proceeding in a representative capacity has achieved a "substantial benefit" for a class
10 of persons. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 38 ("*Serrano III*").) There are two methods
11 of calculating attorneys' fees in civil class actions: (1) the lodestar/multiplier method, and (2) the
12 percentage of recovery method. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
13 254; *see also Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 21043, 1047 [citing *In re*
14 *Wash. Pub. Power Supply Sys. Litig.* (9th Cir.1994) 19 F.3d 1291, 1295–96].)

15 Class Counsels' fee request is justified under either method. Class Counsel obtained an
16 excellent result for the Class after thorough investigation, litigation, mediation, and finally,
17 negotiation of a settlement. Class Counsel has also expended a substantial amount of work in the
18 case. The positive reaction of the Class further demonstrates that Class Counsel's fee request is
19 reasonable in light of the results achieved.

20 **B. Class Counsel Requests an Award of Fees Based on the Common Fund Doctrine.**

21 Class Counsel seek a fee award for the successful prosecution and resolution of this action,
22 calculated as a percentage of the total value of benefits to Class Members by the settlement, which
23 is an appropriate method for determining an award of attorneys' fees. (*Serrano v. Priest* (1977)
24 20 Cal.3d 25, 34; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The
25 purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation
26 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the
27 entire burden alone." (*Vincent v. Hughes Air West, Inc., supra*, 557 F.2d at p. 769.)

28 The Common Fund Doctrine is predicated on the principle of preventing unjust

1 enrichment. When a litigant’s efforts create or preserve a fund from which others derive benefits,
2 the Court may spread litigation costs proportionally among all the beneficiaries to compensate
3 those who created the fund. “Where the lawsuit results in the recovery of a fund or property
4 benefitting others as well as the plaintiff (e.g., a class action), the court has inherent equitable
5 power to order Plaintiff’s attorney’s fees paid out of the common fund or property.” (*Serrano III*,
6 *supra*, 20 Cal.3d at p. 35.)

7 Such fee spreading assures that all those benefited by the litigation pay their fair share of
8 obtaining the recovery. (*Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 26.)
9 “Percentage fees have traditionally been allowed in such common fund cases.” (*Id.* at p. 27.) The
10 California Supreme Court has long approved of awarding fees as a percentage of the settlement.
11 (*Serrano III, supra*, 20 Cal.3d at p. 35.) California courts have been expressly authorized to award
12 attorneys’ fees so as “**to ensure that the fee awarded is within the range of fees freely**
13 **negotiated in the legal marketplace incomparable litigation.**” (*Lealao, supra*, 82 Cal.App.4th
14 at p. 50, emphasis added.) As *Lealao* explained, in a representative action, courts must consider
15 the amount of attorney fees typically negotiated in comparable litigation: “Given the unique
16 reliance of our legal system on private litigants to enforce substantive provisions of law through
17 class and derivative actions, attorneys providing the essential enforcement services must be
18 provided incentives roughly comparable to those negotiated in the private bargaining that takes
19 place in the legal marketplace, as it will otherwise be economic for defendants to increase
20 injurious behavior. It has therefore been urged (most persistently by Judge Richard Posner) that
21 in defining a ‘reasonable fee’ in such representative actions the law should ‘mimic the market.’”
22 (*Id.* at p. 47.)

23 In this case, the fees are being paid from the common fund; accordingly, the fee should
24 be awarded to mimic fees freely negotiated in the legal marketplace for comparable common fund
25 cases under *Lealao*. As *Lealao* acknowledged, in cases like this, the percentage-of-the-benefit
26 approach should be considered, because “it better approximates the workings of the marketplace
27 than the lodestar approach.” (*Lealao, supra*, 82 Cal.App.4th at p. 49; see also *Apple Computer,*
28 *Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270 [observing that “attorney fees awarded

under the common fund doctrine are based on a 'percentage-of-the-benefit' analysis"].)

In *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 503, the California Supreme Court affirmed that trial courts may grant attorneys' fees in a common fund case based on a percentage of the recovery. *Lafitte* held 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. 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." (*Ibid.*)

Thus, California courts have affirmed the continued validity of percentage fee awards in class action cases. Under these principles, a percentage of the common fund fee award is properly based on the total settlement. Class Counsel's application for an award of attorneys' fees in an amount of one-third of the settlement amount created on behalf of the Class is reasonable and fair.

Numerous other courts have recognized the advantages of awarding fees as a percentage of the common fund over the alternative lodestar approach, which usually involves wading through voluminous and often indecipherable time records. (*See, e.g., In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375; *see also Lealao, supra*, 82 Cal. App 4th at p. 28 [discussing findings of task force commissioned by the Third Circuit, which concluded that the percentage method is superior].) The Ninth Circuit routinely uses the percentage of the common fund approach to determine the award of attorney's fees. (*See, e.g., In re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79 [approving attorney's fee of 33 1/3%].)

Class Counsel seeks a fee award calculated as a percentage of the Gross Settlement Amount for the successful prosecution and resolution of this action. For Class Counsel, the fees here were wholly contingent in nature, and the case presented far more risk than the usual

1 contingent fee case. There was the prospect of the enormous cost inherent in class action litigation,
2 as well as a long battle with a corporate defendant. Class Counsel risked their time, money, and
3 resources to ensure the successful litigation of this action on behalf of the Class Members.
4 Accordingly, the requested percentage of the common fund is appropriate, and Class Counsel
5 respectfully requests that the Court enter an Order to that effect. (Arakelyan Decl. ¶ 34.)

6 Moreover, the Class Notice mailed to Class Members stated the amount of fees being
7 requested by Class Counsel. Not a single Class Member objected to an award of fees in the amount
8 requested to date. (*Id.* at ¶ 32.)

9 Finally, the necessity and financial burden of private enforcement render an award
10 appropriate. Without the incentive of an attorneys' fee award, Plaintiffs could not have afforded
11 to hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiffs'
12 potential recovery. (*See Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th
13 1033, 1044 ["As to the necessity and financial burden of private enforcement, an award is
14 appropriate where the cost of the legal victory transcends the claimants' personal interest; in other
15 words, where the burden of pursuing the litigation is out of proportion to the plaintiff's individual
16 stake in the matter."].)

17 **C. Optional Lodestar Cross-Check Confirms Reasonableness of Fees.**

18 California courts have been expressly authorized to award attorneys' fees so as "to ensure
19 that the fee awarded is within the range of fees freely negotiated in the legal marketplace in
20 comparable litigation." (*Lealao, supra*, 82 Cal.App.4th at p. 50.) Specifically, *Lealao* holds that
21 if the court sets fees under a lodestar, the multiplier should consider what counsel would have
22 earned on the free market. The free market is determined by the percentage of the common fund,
23 not the lodestar amount. (*Ibid.*) Accordingly, whatever method the court uses to set fees, the Court
24 is encouraged to look to what the free market would bear under any circumstances. Even if the
25 Court awards fees under the lodestar method, under *Lealao*, the lodestar fees can be adjusted by
26 a multiplier to reflect the percentage of the fund. (*Id.* at pp. 19, 50.)

27 Once the Court establishes the lodestar amount, it may enhance the fee award by a
28 multiplier in order to make an appropriate fee award. (*Serrano III, supra*, 20 Cal. 3d at p. 48.)

1 The pertinent factors include the difficulty of the questions involved and the skill in presenting
2 them, the contingent nature of the fee award, the extent to which the litigation precluded other
3 employment, and the percentage-of-the-fund the attorney would have received on the fair market.
4 (*Ibid.*; *Lealao, supra*, 82 Cal.App.4th at p. 49.) However, this list is not exhaustive, and the Court
5 can consider other factors it deems important in setting the multiplier. (*Id.* at p. 37.)

6 In this case, by the time of the Final Approval hearing, Class Counsel will have worked a
7 total of 208.4 hours on this case, with a lodestar of approximately \$191,282.30 (excluding
8 paralegal support). (Arakelyan Decl., ¶ 36, **Ex. 1**.) Class Counsel requests a fee of \$278,333.33,
9 which requires a reasonable multiplier of 1.46 (\$278,333.33 divided by \$191,282.30). The
10 efficiency with which settlement was reached, the excellent results and quality of the settlement,
11 and the contingent risk support the reasonableness of Class Counsel's fee request. (*Id.*)

12 Moreover, the requested 1.46 lodestar multiplier is consistent with the factors recognized
13 by California courts in determining whether an enhancement is appropriate. (*Laffitte v. Robert*
14 *Half International Inc.* (2016) 1 Cal.5th 480, 503 [when class action litigation establishes a
15 monetary fund for the benefit of the class members, and the trial court in its equitable power
16 awards class counsel a fee out of that fund, the court may determine the amount of a reasonable
17 fee by choosing an appropriate percentage of the fund created]; *Ketchum v. Moses* (2001) 24
18 Cal.4th 1122, 1132 [[t]he purpose of a fee enhancement, or so-called multiplier, for contingent
19 risk is to bring the financial incentives for attorneys enforcing important constitutional rights . . .
20 into line with incentives they have to undertake claims for which they are paid on a fee-for-
21 services basis]; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 255 (2001) [“[m]ultipliers
22 can range from 2 to 4, or even higher.”]) (*Id.* at p. 37.)

23 **D. Class Counsel's Hourly Rates Are Reasonable.**

24 D. Law requests an hourly rate of \$1,177.00 for Senior Counsel David Keledjian, \$610
25 for former Associate Attorney Kevin Burns, \$1,552.00 for Managing Partner David Yeremian,
26 \$1,345.00 for Founder and Managing Attorney Emil Davtyan, and \$750.00 for Associate
27 Attorney David Arakelyan. (Arakelyan Decl., ¶¶ 43 – 56.)

28 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and

1 experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
2 1095.) The moving party meets its burden in this regard by submitting “declarations evidencing
3 the reasonable hourly rate for their services and establishing the number of hours spent working
4 on the case” as “California case law permits fee awards in the absence of detailed time sheets.”
5 (*Wershba*, 91 Cal.App.4th at 254-55; *Dunk v. Ford Motor* (1996) 48 Cal.App.4th 1794, 1810;
6 *Nightengale v. Hyundai Motors America* (1994) 31 Cal.App.4th 99, 103.) The hours spent and
7 the reasonable hourly compensation are computed to arrive at a “lodestar” figure which may then
8 be augmented or diminished by the court taking into account various “multiplier” factors. (*See*
9 *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 622 (citing *Serrano III*, 20
10 Cal.3d at 48-49).)

11 The Court may consider other factors when determining a reasonable hourly rate, such as
12 the nature of the work performed, the relevant area of expertise, and the attorney’s customary
13 billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal App.4th 629, 632.) One
14 difficulty in determining the hourly rate of attorneys of similar skill and experience in the relevant
15 community is the scarcity of hourly fee-paying clients in class action litigation. As a practical
16 matter, few if any consumers pay attorneys’ fees on an hourly basis for such extensive litigation,
17 thus retainer agreements in such cases are based on a contingency fee relationship. Although there
18 is no customary billing rate, the nature of class action work should be strongly considered by the
19 Court.

20 Class Counsel charges rates commensurate with the prevailing market rates in the Los
21 Angeles and Riverside County areas for attorneys of comparable experience and skill handling
22 complex litigation. Aside from being warranted by our skill, experience and ability, Class
23 Counsel’s rates that were used in application of the lodestar cross check in this case are supported
24 by the Laffey Matrix. (Arakelyan Decl. ¶ 40, Ex. 6.)

25 The rates are also consistent with surveys relied on by other courts. (*Martinez v. Helzberg's*
26 *Diamond Shops* (C.D. Cal., Sept. 24, 2021, No. EDCV201085PSGSHKX) 2021 WL 9181893, at
27 at *10 [relying on “The Real Rate Report”]; *Gutierrez v. Chopard USA Ltd.* (2022) 82 Cal.App.5th
28 383, 387 [Unruh Act case affirming award based on Laffey Matrix, available at

1 <http://www.laffeymatrix.com/sec.html>].) (Arakelyan Decl., ¶ 40.)

2 In sum, Class Counsel are attorneys who command a high rate based on their skill and
3 experience. They have had success in class actions, are held in high regard by the legal
4 community, and practice in a niche area. This case required attorneys with great skills and
5 financial backing. To obtain such an attorney on the free market, a client must pay appropriate
6 compensation. Therefore, Class Counsel's requested rate is fair and reasonable.

7 **E. Class Counsel's Hours Are Reasonable.**

8 "Testimony of an attorney as to the number of hours worked on a particular case is
9 sufficient evidence to support an award of attorney fees, even in the absence of detailed time
10 records." (*Martino v. Denevi* (1986) 182 Cal. App. 3d 553, 559.)

11 Reasonable hours include, in addition to time spent during litigation, the time spent before
12 the action is filed, including time spent interviewing the clients, investigating the facts and the
13 law, and preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S.
14 54, 62.) Further, the fee award should include fees incurred to establish and defend the attorneys'
15 fee claim. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 639.)

16 Here, Class Counsels' hours are fair and reasonable. By the time of the Final Approval
17 hearing, Class Counsel will have worked a total of 208.4 hours on this case. (Arakelyan Decl., ¶
18 36, **Ex. 1**.) Class Counsel requests that the Court find that these hours were reasonably expended
19 in this litigation.

20 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT**
21 **OF COSTS.**

22 The request for reimbursement of costs is fair and reasonable. Class Counsel seeks
23 reimbursement of combined costs of \$21,790.57 in litigation expenses, which is slightly less than
24 the costs incurred by Class Counsel in this case.¹ (Arakelyan Decl., ¶ 30, **Ex. 2**, Itemized Costs.)
25 The Parties' Settlement Agreement provides for reimbursement of reasonable litigation costs.
26

27 ¹ This includes Class Counsels' costs to date and the anticipated filing costs for filing this
28 Motion, the Administrator's declaration regarding final distribution, dismissal of the class action
case and a Notice of Entry of Order.

1 (*Id.*) Class Counsel’s request for reimbursement of reasonably incurred, out-of-pocket litigation
2 costs should therefore be granted.

3 The parties’ Settlement Agreement provides for the Administration Costs capped at
4 \$25,000.00. Apex will proceed with additional tasks related to this matter, such as calculating
5 settlement award payments, issuing and mailing settlement award checks, handling necessary tax
6 filings and reporting on these payments, and any other tasks mutually agreed upon by the Parties
7 or ordered by the Court for Phoenix to undertake. The Administrator’s request for fees in the
8 amount of \$6,000.00 should therefore be granted. (Arakelyan Decl. ¶ 31, Ex. 3, Dancy Decl. ¶
9 19.)

10 These costs are all litigation related. The authority for the Court to award this is the parties’
11 Settlement Agreement and the applicable Labor Code provisions.

12 **VII. THE CLASS REPRESENTATIVE’S SERVICE PAYMENT IS REASONABLE**
13 **AND SHOULD BE APPROVED.**

14 A class representative is generally entitled to a fee for service to the Class. (*Clark v.*
15 *American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804.) “Since without a named
16 plaintiff there can be no class action, such compensation as may be necessary to induce him to
17 participate in the suit could be thought the equivalent of the lawyers’ nonlegal but essential
18 case-specific expenses, such as long-distance phone calls, which are reimbursable.” (*Ibid.*; *see,*
19 *e.g., Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 [approving \$10,000
20 enhancement for each of four named plaintiffs]; *Godfrey v. Oakland Port Services Corp.* (2014)
21 230 Cal.App.4th 1267, 1272 [affirming \$10,000 enhancement for each of two named plaintiffs];
22 *Glass v. UBS Financial Services, Inc.* (N.D. Cal., Jan. 26, 2007, No. C-06-4068 MMC) 2007 WL
23 221862, at *17 [awarding \$25,000 enhancement to each of four named plaintiffs].)

24 “Since without a named plaintiff there can be no class action, such compensation as may
25 be necessary to induce him to participate in the suit.” (*Clark v. Am. Residential Services LLC*
26 (2009) 175 Cal.App.4th 785, 804.) “[T]he rationale for making enhancement or incentive awards
27 to named plaintiffs is that they should be compensated for the expense or risk they have incurred
28 in conferring a benefit on other members of the class.” (*Id.* at 806.) “An incentive award is

appropriate ‘if it is necessary to induce an individual to participate in the suit.’” (*Cellphone Term. Fee Cases* (2010) 186 Cal. App. 4th 1380, 1394, quoting *Clark, supra*, 175 Cal. App. 4th at 804.)

“[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citation.]” (*Van Vranken v. Atlantic Richfield Co.* (N.D.Cal.1995) 901 F.Supp. 294, 299; see *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958 [class representative enhancements “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general”].)

The request for the Class Representative’s Service Payment of \$5,000 for Class Representative Dustin Smith is fair and reasonable given the exceptional result achieved on behalf of the Class. (Arakelyan Decl., ¶ 28.) The Class Representative’s Service Payment is based on their contribution to the Class, risks incurred, stress, benefit of the Settlement to the Class Members, and all other factors presented to the Court and set forth in their declaration in support of Plaintiff’s Motion for Preliminary Approval. (See Declaration of Class Representative Dustin Smith [“Smith Decl.”], filed in support of the Motion for Preliminary Approval, attached as **Exhibit 4** to the Arakelyan Decl.) This Settlement had a great result: 100% of the money will be paid out because there is no reversion to Defendant, and nearly all of Class Members who received the Class Notice to date are participating in the settlement. There is zero opt-outs to the class portion of the Settlement, to date. (Arakelyan Decl. ¶ 26, **Ex. 3** – Dancy Decl. ¶ 10–13.)

Class Representative Dustin Smith has worked hard at every step of this litigation, remaining in contact with Class Counsels’ office throughout the litigation and the settlement process. Mr. Smith researched the issues he could bring against Defendants and discussed his causes of actions with his attorneys, including undergoing detailed interviews. He searched for and gathered relevant documents in his possession. He spoke with his attorneys regarding

1 potential witnesses and assisted in preparing for mediation. The Class Representative has helped
2 with all aspects of this litigation and has been diligent and acted above and beyond what is
3 expected of a class representative throughout all stages of the litigation, up to and including
4 Preliminary and Final Approval. As detailed in the Smith Decl., Plaintiff estimates that he has
5 spent at least 30 hours this case. (Arakelyan Decl., **Ex. 4** – Arakelyan Decl. ¶ 10.)

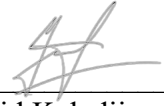
6 There are few individuals who are willing to act as a class representative and provide the
7 work, diligence, and willingness to assume a substantial risk should the defendant prevail in the
8 case. Here, Plaintiff's willingness to assume the financial risk is significant. California law states
9 that the losing party must pay the prevailing party's cost. As such, if Plaintiff had not prevailed in
10 this case, Plaintiff would have been subjected to a cost award in the amount of tens of thousands
11 of dollars. Accordingly, based on the Plaintiff's contribution and service to the Class and the
12 exceptional results achieved, the Class Representative's Service Payment of \$5,000.00 is
13 reasonable and should be approved.

14 **VIII. CONCLUSION**

15 For all the foregoing reasons, Plaintiff respectfully requests that the Court grant final
16 approval of the Class Action and PAGA Settlement.

17 Dated: August 26, 2026

D.LAW, INC.

18
19 By: 

David Keledjian, Esq.

David Arakelyan, Esq.

Attorneys for Plaintiff, Dustin Smith, on behalf of
himself and others similarly situated