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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

EDGAR SANTIAGO, individually, and on behalf of all others similarly situated, Plaintiffs, vs. MCKIMMEY ELECTRIC, INC., a Nevada corporation, J.M.B. ELECTRIC, INC., a California corporation, and DOES 1 through 50, inclusive, Defendants.	CASE NO. STK-CV-UOE-2024-0005859 MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, AND REQUEST FOR ATTORNEY'S FEES AND COSTS Date: July 23, 2026 Time: 9:00 a.m. Dept. 10D

I. INTRODUCTION

Plaintiff and Class Representative Edgar Santiago seeks final approval of a non-reversionary class action and representative PAGA settlement resolving wage and hour claims on behalf of 126 Class Members including all individuals who are or were employed by Defendants McKimmey Electric, Inc. and J.M.B. Electric, Inc. (together "McKimmey" or "Defendants") in California at any time during the class period of May 27, 2020 to December 21, 2025. The proposed $275,000 total settlement provides about $140,033 in cash payments to the Class, with an average award of about $1,111. The remaining balance will cover settlement administration costs, civil penalties to the state under Plaintiff's PAGA claim, a modest enhancement award to Plaintiff, and reasonable attorney's fees and costs. The parties and their counsel finalized the settlement after extensive and difficult arms-length negotiations overseen by an experienced and highly-regarded mediator. The Court conditionally certified the Class and preliminarily approved the settlement on March 26, 2026. Since then, the Court-approved notice form was mailed to the Class Members on May 11, 2026, and they reacted very favorably to the settlement. As of the date of this motion, zero class members have opted out of the settlement and there are no objections.

Further, Class Counsel secured an excellent settlement with Defendants after some two years of investigation, litigation, and settlement negotiation and administration, all without any compensation for services rendered or costs expended. The class notice duly informed the class members that Class Counsel would request attorney's fees not to exceed 35% of the Gross Settlement Amount, or $96,250, along with reimbursement of no more than $15,000 for actual costs incurred litigating this matter. As of the filing of this motion, *not one Class Member objected* to the proposed fee award. Consistent with the Settlement and Notice, Plaintiff now respectfully requests the Court award Class Counsel's fees in the amount of $96,250 and costs in the amount of $13,716.46, as described in the Declaration of J. Kirk Donnelly ("Donnelly Decl.") filed herewith. The requested attorney's fees are well within the range of reasonableness, especially considering the complex and risky nature of this litigation, the contingent risk assumed, and the nearly two+ year delay in payment and, when subjected to a lodestar crosscheck, results in fee request equal to the base lodestar with a very modest 1.03 upward modifier.

Accordingly, on behalf of himself and the Settlement Class, Plaintiff respectfully requests the Court grant this motion, give full and final approval to the settlement, grant Class Counsel's request for attorney's fees and costs, and enter judgment according

II. <u>FACTUAL BACKGROUND AND PROCEDURAL POSTURE</u>

Defendants both are electrical contracting firms that specialize in working on construction of multi-family dwellings. Defendant McKimmey is based in Reno, Nevada (although it is a licensed California contractor), while Defendant JMB is based in San Jose. Plaintiff Edgar Santiago worked for both Defendants as an hourly paid electrician for several years until his termination on or around March 15, 2024. During his tenure he worked interchangeably for both Defendants, oftentimes performing work for both in the same pay period. [Donnelly Decl., ¶ 2.]

On May 17, 2024, Plaintiff filed a class action complaint against Defendants for alleged violations of the Labor Code and Wage Orders. Plaintiff's complaint alleges (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Breaks; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Waiting Time Penalties; (7) Failure to Reimburse for All Necessary Business Expenses; and (8) Failure to Provide Access to Records. [Donnelly Decl., ¶ 3.]

In his complaint, Plaintiff contended McKimmey failed to properly pay all wages due by rounding off time punches such that employees lost compensable hours worked. Plaintiff also argued Defendants failed to pay for overtime hours at the required premium rate by having employees work under an invalid Alternative Work Schedule of four ten hour shifts per week, which resulted in a failure to pay daily overtime premiums. Plaintiff further contended Defendants failed to pay daily overtime premiums where appropriate. Next, Plaintiff alleged he and other employees did not receive all meal breaks as required under the Labor Code and IWC Wage Orders, and that breaks regularly were non-compliant and in particular lasted less than 30 minutes. Similarly, Plaintiff alleges McKimmey failed to provide all required rest breaks, including third rest breaks on shifts lasting longer than 10 hours. Plaintiff also alleged he and other employees had to use both their personal phones and personal vehicles for work purposes without reimbursement. Lastly, Plaintiff alleged claims for failing to provide proper itemized wage statements and untimely payment of all wages due on separation of employment. [Donnelly Decl., ¶ 4.]

After notice to the Labor & Workforce Development Agency ("LWDA") and Defendants, and after exhausting administrative remedies, Plaintiff filed a first amended complaint on May 31, 2024 adding a cause of action under PAGA based on the same alleged Labor Code violations. [Donnelly Decl., ¶ 5.]

McKimmey has at all times denied Plaintiff's allegations and maintained its meal and rest break, payroll, and reimbursement policies and procedures comply with California law. McKimmey contends that it provided employees with compliant meal and rest breaks, properly tracked employee time, paid Plaintiff and all other employees all wages due and at the correct hourly rates, and reimbursed any necessary business expenses. McKimmey also strongly contends that the case cannot be maintained as any kind of class or representative action, arguing for example that to the extent class members missed meal breaks, that such breaks were non-compliant, or that employees worked "off the clock," it was intermittent and infrequent and evidence of such violations would be purely anecdotal, and therefore individualized issues predominate and class certification would be inappropriate. [Donnelly Decl., ¶ 6.]

Once the matter was at issue, Plaintiff served an initial round of written discovery. Thereafter, the Parties began meeting and conferring regarding discovery, potential law and motion, and other case management issues, and ultimately agreed to early mediation. The Parties further agreed to an informal exchange of information to facilitate meaningful settlement discussions. Consequently, Defendants produced, and Plaintiff's counsel reviewed, payroll records, personnel policies and employee handbooks, meal break policies, personnel files, and a random sampling of paystubs and time records. Defendants also provided documents and information reflecting the estimated number of class members, total amount of workweeks and pay periods they worked, and average hourly pay rates, among other relevant data.

In October 2025, the Parties participated in mediation with Steve Mehta, Esq., a respected wage and hour class action mediator. The mediation lasted a full day and with the mediator's assistance the Parties reached agreement on all major issues. [Donnelly Decl., ¶¶ 7-8.] The Court granted preliminary approval to the proposed settlement on March 26, 2026.

Class notices were mailed to class members on May 11, 2026, with a 30-day window (to June 10, 2026) for class members to opt out of or object to the proposed settlement. [Declaration of Stacey Shim ("Shim Decl."), ¶¶ 7, 10.]

III. THE PROPOSED SETTLEMENT TERMS

Under the Settlement Agreement, Defendants will pay $275,000.00 into a common fund, the Gross Settlement Amount ("GSA"), in two equal payments. The first payment will be made 60 days after service of notice of entry of the Order granting Final Approval of the settlement, and the second payment will be made 90 days after the first payment. Reasonable attorney's fees of up to thirty-five percent of the GSA, or $96,250, actual litigation costs of up to $15,000 (only $13,716.46 is requested), a modest enhancement award of up to $10,000 for plaintiff, settlement administration costs of $6,000, and a payment of $15,000 for alleged civil penalties under PAGA (of which $11,250 will go to the LWDA for its share of the PAGA penalties, with the remaining $3,750 to the Aggrieved Employees), all will be paid from the GSA. The remainder of approximately $141,033 will be allocated among the Participating Class Members based on their total weeks worked during the Class Period. No portion of the GSA will revert to the Defendants. [Donnelly Decl., ¶ 9.]

A. Certification of the Settlement Class

The Court conditionally certified a settlement class defined to include all current and former non-exempt California employees who worked for Defendants at any time during the Class Period of May 27, 2020 to December 21, 2025. The Settlement Administrator ultimately mailed a total of 126 class notices on May 11, 2026. [Shim Decl., ¶ 7.] Nothing has changed to reconsider the Court's grant of conditional class certification.

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates Defendants to pay $275,000 to resolve the Settlement

Class's claims, inclusive of attorney's fees and costs. At least $141,033 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their Individual Class Payment. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. One-third of each Individual Class Payment will be allocated to wages and the remaining two-thirds will be allocated to interest on unpaid wages and statutory penalties; one hundred percent of each Individual PAGA Payment will be allocated to penalties. McKimmey will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed (because a class member does not cash his or her settlement check) will be forwarded to the California State Controller's Unclaimed Property Fund. [Donnelly Decl., ¶ 10.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her number of weeks worked for Defendants during the Class Period. Thus, each Participating Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal breaks, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. The proposed allocation provides a reasonable way to compensate Class Members based the amount of time they worked for Defendants, and the number of instances they missed a break, were not provided compensation in lieu of such missed breaks, lost wages due to the alleged rounding, etc. [Donnelly Decl., ¶ 11.]

The average class award will be approximately $1,111, and class awards will range from about $3.76 to $3,769. The average PAGA award will be about $34.40, and PAGA awards will range from $0.65 to $93. [Shim Decl., ¶¶ 16, 18.]

C. Settlement Administration

Apex Class Action, LLC, as the Court-approved Settlement Administrator, mailed the Notice Packet to the Class Members after making all reasonable effort to ascertain the best mailing address, including running each address through the National Change of Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Shim Decl., ¶¶ 4-8.] The Class Notice, previously approved by the Court, duly informed Class Members of the settlement terms, including the estimated relief each Class Member will receive, the amounts to be requested for attorney's fees and the class representative enhancement awards, and the right to opt out of or object to the settlement. [Shim Decl., ¶ 7, Exh. A.] Apex mailed 126 total Notice Packets on May 11, 2026. [Shim Decl., ¶ 7.] As of the filing of this motion, zero Notice Packets were deemed undeliverable, for a 100% success rate. [Shim Decl., ¶ 9.] The response window for opting out, objecting to the settlement, or submitting a dispute, expired on June 10, 2026. [Shim Decl., ¶ 10.] As of the filing of this motion, Apex has received zero requests for exclusion (for a 100% participation rate), zero objections to the settlement, and no disputes regarding the information used to calculate class member settlement shares. [Shim Decl., ¶¶ 11-13.]

D. <u>Release of Claims</u>

All Participating Class Members will release Defendants from all claims alleged in the operative First Amended Complaint, or that could have reasonably been brought based on the allegations in the FAC, including PAGA claims, that arose during the Class Period and PAGA Period. The release is limited to the claims that were actually pleaded or could have reasonably been pleaded based on the alleged facts in the FAC, and the PAGA notice for the PAGA claims. Only Plaintiff is entering int a full general release of all claims and waiver of Civil Code section 1542. [Donnelly Decl., ¶ 12.]

E. <u>PAGA Claims and Notice to the LWDA</u>

The Parties allocated $15,000 to payment of civil penalties under PAGA for such claims against Defendants, as addressed in more detail below, and Plaintiff submits that amount is fair, reasonable and adequate, and consistent with PAGA's underlying purposes. As required by Labor Code section 2699(*l*)(2), Plaintiff gave notice of the settlement and final approval hearing to the LWDA via its online portal. [Donnelly Decl., ¶ 13; Exh. 1.]

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V. ARGUMENT

A. Standards For Approval

The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly compromised, the settlement of a class action requires court approval. Cal. Rule of Court 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* This review is accomplished through a two-step process intended to determine whether, under the totality of circumstances, the settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91 Cal.App.4th at 245.

On a motion for final approval, the trial court is charged with determining whether, in light of the total circumstances of the action and the response of the class members to the proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that determination and may consider a number of relevant factors, including: the strength of plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of further litigation; the amount offered in settlement; the extent of discovery and stage of the proceedings; the experience and opinion of counsel; and the reaction of class members to the settlement. Id. In light of the strong judicial policy favoring the settlement of class actions, courts generally apply a presumption of fairness to a proposed class action settlement when: (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; Wershba, 91 Cal.App.4th at 245.

B. The Proposed Settlement Merits Final Approval

The proposed settlement of this action warrants final approval under the standards summarized above. The settlement is fair, reasonable and adequate, and represents a favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly approved by the class members as there are no objections and no class member has requested exclusion.

1. The Settlement Is the Product of Arm's-Length, Informed Negotiations

The settlement is not the result of fraud or collusion. Rather, the proposed settlement was reached following arm's-length negotiations in a mediation presided over by Steve Mehta, Esq., a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Donnelly Decl., ¶ 8.] Moreover, Plaintiff and his counsel were well-informed about the facts and the law, and counsel J. Kirk Donnelly has years of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Donnelly Decl., ¶¶ 31-34.] Defendant likewise was represented by highly-qualified and experienced defense counsel. Both sides advocated vigorously for their clients and nothing was "left on the table."

2. The Class Reacted Favorably to the Settlement

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and no Class Members requested exclusion. [Shim Decl., ¶¶ 11-12.] As many courts recognize, class member reaction to the settlement is one of the most important factors to consider in determining if final approval should be granted. Mandujano v. Basic Vegetable Prods., Inc. (9th Cir. 1976) 541 F.2d 832, 837 ; see also In re: American Bank Note Holographics (S.D.N.Y. 2001) 127 F.Supp.2d 418, 425 ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy") (internal quotation marks omitted).

C. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's Case and the Risks and Costs of Further Litigation, And Other Meets the Dunk/Kullar Factors

Prior to mediation, the parties engaged in substantial informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding Defendants' payroll practices, pay stubs and time records for a sample of the class members, meal and rest break policies, etc., and information from McKimmey regarding class size and breakdown of job positions, work weeks, rates of pay, and other information used to formulate a damages model. Plaintiff's counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class. [Donnelly Decl., ¶¶ 7, 14.]

Using that data, Plaintiff ran various calculations and estimated Defendants' likely maximum exposure on the class claims at approximately $3,244,475, including about $48,000 on the unpaid wage/rounding claims; $313,000 on the underpaid daily overtime premium/AWS claims, $583,585 on the meal break claims, $1,263,170 on the rest break claims, $51,930 on the expense reimbursement claim, $258,550 on the wage statement claims, and $726,240 on the waiting time penalty claims. [Donnelly Decl., ¶ 15.] Plaintiff and his counsel substantially discounted the value of these claims, however, in light of the multiple and considerable risks posed by proceeding with the litigation. Defendants dispute these calculations.

On the unpaid wage/rounding claim, Plaintiff alleged that for most of the class period the time records produced suggest time punchers were was rounded off and employees were paid only in quarter-hour increments and generally appear to have been paid based on their scheduled hours instead of their actual hours worked. Plaintiff's review of the sample records suggested the class members lost a net of about 1.52 minutes per shift on average due to the rounding, with a corresponding loss of wages. As held in recent cases such as Camp v. Home Depot USA, Inc. (2022) 84 Cal.App.5th 638 (2022), rev granted (Feb.1, 2023) S277518/H049033, where employers are able to precisely record employee hours worked rounding may be inappropriate. [Donnelly Decl., ¶ 16.]

Next, Plaintiff alleged that he and other class members worked under an Alternative Work Schedule ("AWS") where they worked a "4/10" schedule (4 shifts of 10 hours) rather than a standard "5/8" schedule. Under the applicable IWC Wage Order, employers may to implement an AWS, which in general provides that “[n]o employer shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order, a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day within a 40 hour workweek without the payment of an overtime rate of compensation.” Wage Order 1-2001, § 3(B)(1). Here, Plaintiff argued Defendants did not follow the mandatory administrative procedures for instituting an AWS, and accordingly cannot rely on Wage Order 1-2001, § 3(B)(1) to avoid owing daily overtime premiums on shifts lasting over 8 hours. For this reason, Plaintiff alleged he and other employees who worked under an AWS are entitled to daily overtime premiums for all shifts where they worked over 8 hours. [Donnelly Decl., ¶ 17.]

In response to Plaintiff's various unpaid wage claims, Defendants argued their timekeeping and payroll policies accurately tracked and paid for all hours worked by its employees at the correct rates of pay, including all required piece rate pay and required overtime premiums. On the alleged rounding claims, Defendants further argued that rounding is permissible under <u>See’s Candy Shops, Inc. v. Superior Court</u> (2012) 210 Cal.App.4th 889, where the rounding is neutral in its overall impact on employee hours, which McKimmey alleged is the case here. [Donnelly Decl., ¶ 18.]

On the meal break claims, Plaintiff argued Defendants' meal and rest break policy was not fully compliant with California law and, regardless, that Plaintiff’s review of the time and payroll records provided suggested numerous "de facto" violations, primarily for short meal breaks that lasted less than the required 30 minutes. Plaintiff's review of the time records produced suggested around 46% of shifts had a unique violation for a missed, late, or short meal period. Plaintiff similarly argued that Defendants failed to provide all required rest breaks, and in particular employees did not received required third rest breaks on shifts longer than 10 hours. [Donnelly Decl., ¶ 19.]

In response, McKimmey argued its break policies were fully compliant and that it met its obligation to provide employees with all required meal and rest periods. Per McKimmey, many class members waived meal periods when appropriate and also that, in light of Defendants' compliant policies, whether a class member missed a meal period, received a short meal period, or missed a rest break would have been an aberrational and against company policy. Thus, per Defendants, these issues are not amenable to class or representative treatment since their resolution would require individualized inquiries as to why a break was missed or non-compliant. [Donnelly Decl., ¶ 20.]

On the expense reimbursement claim, Plaintiff alleged he and the class members had to use their personal cell phone for work purposes, including downloading the ExakTime app to track their time as well as communicating with supervisors, navigating to job sites, and taking pictures of work to send to management. An employer must reimburse employees for use of personal cellular devices, and if the employee has an unlimited monthly plan then the employer must reimburse an amount that equates to the employee's percentage of use for work. Cochran v. Schwan's Home Serv. (2014) 228 Cal.App.4th 1137. [Donnelly Decl., ¶ 21.]

In response, Defendants argued that each job site had several company-owned tablets available with the ExakTime app for employees to use in recording their hours and accordingly if an employee downloaded the app to their own phone it was purely for personal convenience rather than business necessity. Defendants further contended their policies restricted use of personal devices while working, especially given the hazardous nature of the work, and otherwise there would be no reason for employees to use their own phones while on the job. Thus, per Defendants, no reimbursement was necessary under Labor Code § 2802. [Donnelly Decl., ¶ 22.]

The claims under Labor Code sections 203 and 226 are derivative of the primary unpaid wage claims, and accordingly are subject to the same risks and uncertainties plus additional risks posed by the need to account for "good faith" and other defenses available to Defendants. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203 even though class prevailed on underlying claim for failure to pay living wages). Thus, while these claims largely are derivative of the unpaid wage claim, they also are subject to additional defenses. [Donnelly Decl., ¶ 23.]

As far as potential PAGA liability, the allegedly aggrieved employees theoretically are entitled about $1.17 million in civil penalties should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at issue for every single pay period. [Donnelly Decl., ¶ 24.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on McKimmey's various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial). Defendants dispute these calculations.

Accordingly, the Parties allocated $15,000 to PAGA penalties, and Plaintiff submits this amount is reasonable under the circumstances and in line with comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a $7,500 PAGA payment reasonable when measured against the overall settlement of $345,000 and the possible weaknesses in Plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement.

The settlement obviates the significant risk that this Court may find any kind of class or representative resolution unachievable or deny certification of all or some of Plaintiff's claims. Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued litigation would be lengthy and expensive as the Parties pursued merits discovery, a probable motion to decertify, as well as trial and possible appeals, and would substantially delay any recovery by the class with no assurance of recovering significantly more than the proposed settlement. While Plaintiff is confident in the merits of these claims, legitimate controversies exist regarding each one of them and Plaintiff also recognizes proving the amount of wages and penalties due each Class Member would be an expensive, time-consuming, and uncertain proposition. [Donnelly Decl., ¶ 25.]

Plaintiff and his counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $275,000 recovery represents a significant percentage of Defendant's potential exposure and, given the various procedural and merits risks addressed above, a total recovery for the class of $275,000, which will result in average award of some $1,111 per class member, plus additional amounts under PAGA, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. [Donnelly Decl., ¶ 26.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement is non-reversionary and will provide timely benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

V. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to Apex for its services as the Settlement Administrator. As set forth in the Declaration of Stacey Shim, Atticus performed and will continue to perform its required duties through final distribution of the settlement funds and incurred $6,000 in fees and expenses. [Shim Decl., ¶ 19.] Plaintiff accordingly requests the Court approve payment of $6,000 to Apex from the GSA. [Donnelly Decl., ¶ 27.]

VI. PLAINTIFF'S ENHANCEMENT AWARD

Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of $10,000 for his service in bringing these claims on behalf of the Class. The request is reasonable given the risks he undertook on behalf of the Class Members, and by contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendants' litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing himself at risk of discrimination by future prospective employers. As set forth in more detail in his declaration filed with the preliminary approval motion, among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. [Declaration of Edgar Santiago, ¶¶ 2-9 (filed

February 10, 2026); Donnelly Decl., ¶ 28.] Accordingly, the requested enhancement payment to Plaintiff is appropriate and justified as part of the settlement. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from $2,000 to $25,000).

VII. THE REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE AND SHOULD BE APPROVED

This Court has discretion over the amount of attorneys' fees awarded and court approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the marketplace for cases involving significant contingent risk, such as this one. Deposit Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S. 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed private bargaining, if it were truly possible, might have reached" in determining a reasonable fee, and a fee award should approximate a "range of fees freely negotiated in comparable litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and justified by the work performed, the benefits obtained, and the contingent risk assumed.

As addressed in detail above, at the time the parties reached the tentative settlement success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that some or all the claims would not be certified for class treatment, as Defendant had strong arguments that its compensation policies were legal and properly compensated the class members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the merits, it undoubtedly would have taken several years to realize any recovery while he pursued class certification, trial, and an almost certain appeal. [Donnelly Decl., ¶¶ 16-24.]

Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to obtain, and the settlement provides substantial cash payments to Class Members, with an average award of about $1,111, and with a maximum award of $3,769. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement – there are no objections and no opt outs. [Shim Decl., ¶¶ 11-12.]

B. The Requested Fee Award Is Reasonable and Appropriate

The United States Supreme Court has ruled the parties to a class action properly may negotiate not only the settlement of the action itself but also the payment of attorney's fees. Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983) 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee provisions are the ideal towards which the parties should strive: "A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." The United States Supreme Court has reemphasized this policy and further stressed trial courts have “a responsibility to encourage agreement" on fees. Blum v. Stenson (1984) 465 U.S. 886, 902 n.19.

As part of the Settlement, Defendant agreed not to object to an award of no more than 35% of the GSA for attorney's fees, or $96,250, and up to $15,000 in reimbursement for litigation costs and expenses (only $13,716.46 is requested). Such a fee is commensurate with what the market would provide for similar services and the Court therefore can most certainly enforce the agreement. As California's Court of Appeal has instructed:

> Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior.

Lealao, 82 Cal.App.4th at 47.

Here, the parties did not negotiate the inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to the Class was completed. [Donnelly Decl., ¶ 29.] The requested fee and cost award was a product of these arms-length negotiations and fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As a result, the fee agreed to by the parties should be approved.

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C. **Class Counsel's Fees are Justified When Calculated as a Percentage of the Common Fund**

In approving fee applications, courts typically apply either a percentage-of-recovery method or the lodestar method. Laffitte v. Robert Half Int'l., Inc. (2016) 1 Cal.5th 480, 489; Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260. The California Supreme Court recently recognized the advantages and equities of calculating attorney's fees using the percentage-of-the-common-fund method in another wage-and-hour case:

> 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.

Laffitte, 1 Cal.5th at 503 (citations omitted).

Indeed, both California and federal courts have long recognized an appropriate method for determining the award of attorney's fees is based on a percentage of the total value of benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25, 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc. (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund recovered operates to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

In determining a reasonable common fund fee award, courts should also consider the fact that fees serve as an economic incentive for lawyers to bring class action litigation to achieve increased access to the judicial system for meritorious claims and to enhance deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without prosecution on a contingent basis and use of the class action mechanism, the courthouse door would effectively be closed to most class members due to the relatively small size of their individual claims in relation to the enormous time and cost associated with class action litigation.

Here, Class Counsel seek a fee award for their successful prosecution and resolution of this action of no more than 35% of the GSA, and specifically $96,250.00. The percentage requested is justified for the reasons set forth further below, and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements shows that courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented."); Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery").

D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request

To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar cross check of counsel's fees. "A lodestar cross-check thus 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. Here, Class Counsel spent 106.7 hours of time on this matter, resulting in a modest and very reasonable lodestar of $93,715.

Over the two plus years this matter has been pending, Plaintiff's Counsel's efforts have included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal research, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other employees of the Defendants; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related documents, and drafting the amended complaint; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) drafting initial written discovery; (6) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (7) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (8) drafting a mediation brief and accompanying damages model after review and analysis of Defendants' informal discovery production; (9) attending an all-day mediation; (10) negotiating and drafting the settlement agreement and related documents; (11) drafting motion for preliminary approval, and attending the hearing; (13) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (12) final approval and attorney's fees, and attending the final approval hearing; and (13) extensive communications with the Plaintiff regarding case status, case investigation and document review, mediation, and settlement terms. [Donnelly Decl., ¶ 30, Exh. 2.] Additionally, Class Counsel will incur additional time following final approval to, inter alia, respond to class member inquiries, attend to distribution of settlement funds, and on the compliance hearing.

In pursuing this matter, Class Counsel incurred total attorney's fees of $93,715, and the lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a successful conclusion (106.7 attorney and paralegal hours). The requested attorney hourly rates are reasonable and comport with hourly rates charged by other attorneys with similar experience in this practice area in California. On a lodestar basis, the fee request of $96,250 results in a multiplier of only 1.03, which is a modest enhancement entirely in line with California law. [Donnelly Decl., ¶¶ 30-39.] Indeed, California courts routinely approve multipliers in the in the 2-4 range to compensate for the time and risk of class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).) Class Counsel submits that the requested 1.03 multiplier effectively operates to show that the percentage fee request is reasonable considering the challenges presented in this contingency fee matter, and appropriately compensates Class Counsel for the contingent risk assumed and delay in payment during the two plus years counsel has been representing Plaintiff. Thus, the multiplier results in a fee constituting a fair return on the contingency.

E. The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar Cases.

What has now emerged in most fee award decisions is the recognition that fee determinations in both common fund and statutory fee situations are incapable of mathematical precision because of the intangible factors that must be resolved in the court's discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In determining an appropriate fee in a common fund case, a Court must decide, based on the unique posture of each case, what percentage of the common fund would most reasonably compensate Class Counsel given the nature of the litigation and the performance of counsel. Paul, Johnson, Alston & Hunt v. Graulty (9th Cir. 1989 886 F.2d 268, 272) (the benchmark percentage fee may be adjusted to account for the circumstances involved in a case).

Courts apply a five-part test in calculating a reasonable percentage fee in common fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. Laffitte, l Cal.5th at 489.

1. The Results Achieved.

Class Counsel obtained an excellent result in this case for the Class Members. The Settlement provides real monetary benefits to the Class Members, and the Settlement is particularly advantageous to the Class Member because the proceeds will be distributed shortly as opposed to waiting additional years for a similar, or possibly, less favorable result. Considering many individual claims would be very modest and would not be cost-effective to pursue successfully, the Settlement provided them with fair compensation for their claims. Moreover, the absence of any objection to either the Settlement or the attorney's fee request bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated by the fact that not only one class member opted out. Additionally, the settlement amounts to a substantial percentage of the maximum value of the amount the Class might have obtained if it had tried the case and recovered on all theories seeking recovery of wages and penalties. "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." In re Omnivision Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

2. Class Counsel Bore Considerable Risk.

At the time of filing the complaint, Class Counsel recognized that they would have to expend a substantial amount of time and advance significant costs to prosecute a statewide class action suit with no guarantee of compensation or reimbursement, in the hope of prevailing against a sophisticated company represented by first-rate attorneys. Despite their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks of class certification and the ability to prove class-wide and individual damages. In light of the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's firm, not receiving any compensation for several years while simultaneously advancing litigation costs posed considerable risk and difficulty. [Donnelly Decl., ¶¶ 40-41.]

3. The Skill Required and the Quality of Work.

Practice in the narrow area of wage and hour litigation requires skill, knowledge and experience. The issues presented in this case required more than just a general appreciation of wage and hour law and class action procedure. This Settlement was possible only because counsel persuaded Defendants that Plaintiff and the putative class had a realistic chance of prevailing on their claims despite Defendants' contrary arguments, and that the case would be pursued through class certification and trial if necessary. In successfully navigating these hurdles, Class Counsel displayed appropriate skill while pursuing a risky and difficult case.

4. The Contingent Nature of the Fee and Risk Assumed

There is a substantial difference between the risk assumed by attorneys being paid by the hour and attorneys working on a contingent fee basis. The attorney being paid by the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249, 1256. The attorney working on a contingent basis can only log hours while working without pay towards a result that will hopefully entitle him to a market fee considering the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this risk in this all or nothing contingent fee case wherein the necessity and financial burden of private enforcement makes the requested award appropriate.

Counsel retained on a contingency fee basis, whether in private matters or in class action litigation, is entitled to a premium beyond their standard, hourly, non-contingent fee schedule to compensate for both the contingent risk assumed and the delay in payment. The simple fact is that despite the most vigorous and competent of efforts, success is never guaranteed. McKittrick v. Gardner (4th Cir. 1967) 378 F.2d 872, 875. Indeed, if counsel is not adequately compensated for the risks inherent in difficult class actions, competent attorneys will be discouraged from prosecuting similar cases. Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132-33; Cazares v. Saenz (1989) 208 Cal.App.3d 279, 287.

Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate the investment of unnecessary time in a case, and the adverse resolution of any one of several difficult issues present in this matter could have doomed the entire effort. As discussed, the attorney's fees in this case were not only contingent but fairly risky, and there was always a distinct possibility Plaintiff's counsel would receive nothing for any number of reasons. Indeed, Class Counsel has, on multiple occasions, ultimately recovered no fee in several wage and hour class action cases despite investing substantial attorney time and out-of pocket costs. [Donnelly Decl., ¶¶ 40-41.] Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel also support the fee requested.

5. Awards in Other Cases

As discussed, the attorney's fees requested by Class Counsel are within the range of fees awarded in comparable cases, as California courts regularly approve class action fee awards amounting to as much as 35% of a common fund, as approved by the California Supreme Court in Lafitte. Additionally, review of class action settlements over the past 10 years shows that the courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented."). Class Counsel's requested fees equal to 35% the gross amount recovered on behalf of the class and are well within the range of reasonableness under either the percentage of the recovery or the lodestar method in light of the contingent risk assumed, the delay in payment, the result achieved, and the overall quality of the representation.

F. Class Counsel's Costs and Expenses are Reasonable

Plaintiff's counsel also requests reimbursement of actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the employees, and Plaintiff's counsel is permitted to recover litigation costs and expenses under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35 (common fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund "[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of attorneys' fees by ... [Plaintiffs'] attorneys"). Plaintiff's counsel also is entitled to recover "those out-of-pocket expenses that would normally be charged to a fee-paying client." Harris v. Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

As explained in the Donnelly Declaration, Class Counsel incurred a total of $13,716.46 in expenses incurred in connection with this litigation. These expenses include the amounts paid for court filing fees, service of process, expert fees, postage, and mediation fees, all of which are costs normally billed to and paid by the client. These costs were reasonably incurred in the prosecution of this matter, and were necessary for the successful prosecution of the case and accordingly Plaintiff's counsel requests reimbursement for costs in the amount of $13,716.46, consistent with the cap imposed under the Settlement Agreement. [Donnelly Decl., ¶¶ 42-43.]

VIII. CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that the Court grant this motion and grant final approval of the proposed class action settlement and approve the payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of the Settlement Administrator's fees and expenses, approve the requested class representative enhancement payment, approve the award of attorney's fees and costs as requested, and enter judgment in this action. Finally, Plaintiff requests the Court set a Settlement Compliance Hearing regarding settlement compliance for July 22, 2027, or a later date convenient for the Court.

Dated: June 25, 2026

LAW OFFICES OF J. KIRK DONNELLY, APC

J. Kirk Donnelly

J. Kirk Donnelly
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