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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DANIEL MCCABE, as an individual and on behalf of all others similarly situated, Plaintiff, vs. SUMMIT ELECTRICAL, INC., a California Corporation; and DOES 1 through 100, Defendants.	Case No. 37-2024-00012319-CU-OE-CTL [*Assigned to Hon. Gregory W. Pollack Department C-71*] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, ATTORNEYS' FEES AND COSTS, AND CLASS REPRESENTATIVE SERVICE PAYMENT** Date: March 13, 2026 Time: 9:30 a.m. Dept.: C-71 Action Filed: March 15, 2024 Trial Date: None Set

PLEASE TAKE NOTICE that on March 13, 2026, at 9:30 a.m., or as soon thereafter as the matter may be heard in Department C-71 of the San Diego County Superior Court, located at 330 W. Broadway, San Diego, CA 92101, Plaintiff Daniel McCabe ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for entry of an Order pursuant to California Code of Civil Procedure § 382 and Rule 3.769 of the California Rules of Court:

1. Confirming the certification of the Settlement Class for settlement purposes under California Code of Civil Procedure § 382;
2. Confirming the appointment of Plaintiff Daniel McCabe as the Class Representative for settlement purposes;
3. Confirming the appointment of Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, and Susan J. Perez of Haines Law Group, APC as Class Counsel for settlement purposes;
4. Granting final approval of the proposed Class Action and PAGA Settlement Agreement ("Settlement Agreement");
5. Approving an award of $166,666.67 in attorneys' fees to Class Counsel;
6. Approving an award of $27,234.10 in litigation cost reimbursement to Class Counsel;
7. Approving an award of $6,750.00 in costs to Apex Class Action, LLC for its settlement administration services;
8. Approving a Class Representative Service Payment of $10,000.00 to Plaintiff for his service as Class Representative;
9. Approving the allocation of the $25,000.00 PAGA Settlement Amount, including payment of seventy-five percent (75%) ($18,750.00) to the California Labor and Workforce Development Agency and twenty-five percent (25%) ($6,250.00) to PAGA Members as Individual PAGA Payments; and
10. Entering final judgment in the form of the [Proposed] Judgment and Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement, Attorneys' Fees and

Costs, and Class Representative Service Payment (the "[Proposed] Judgment and Order") submitted herewith.

This Motion is made on the following grounds: (1) the Settlement Class continues to meet the requirements for class certification for settlement purposes only under Code of Civil Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the requested awards of attorneys' fees and costs, the Class Representative Service Payment, and settlement administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the [Proposed] Judgment and Order submitted concurrently herewith should be entered so as to give finality to, and allow for disbursements from, the Settlement.

This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the supporting declarations of Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, Susan J. Perez, Plaintiff Daniel McCabe,[1] and Katie Tran of Apex Class Action, LLC, and the exhibits attached thereto; the Settlement Agreement; all other pleadings and papers on file in this action; and any further oral or documentary evidence or argument presented at the time of hearing.

Dated: February 19, 2026

Respectfully submitted,
HAINES LAW GROUP, APC

By: ______________________
Andrew J. Rowbotham
Attorneys for Plaintiff

[1] Plaintiff Daniel McCabe previously submitted his declaration in support of preliminary approval on October 2, 2025. For the Court's convenience, Plaintiff re-submits the same declaration in connection with this Motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Daniel McCabe ("Plaintiff") submits this Memorandum of Points and Authorities in support of his Motion for Final Approval of Class Action Settlement ("Settlement") on behalf of all current and former non-exempt and/or hourly-paid employees who worked for Defendant Summit Electrical, Inc. ("Defendant") in the State of California at any time from March 15, 2020 to June 26, 2025 ("Class Action Period"). Plaintiff and Defendant are collectively referred to as "the Parties."

The non-reversionary $500,000.00 Settlement provides for Individual Class Action Payments to all 188 participating Class Action Members. The average Individual Class Action Payment is approximately $1,406.11, with the highest estimated Individual Class Action Payment being $4,224.79. The Settlement also resolves Plaintiff's representative claim under the Private Attorneys General Act, Labor Code § 2698 *et seq*. ("PAGA"), providing compensation to the State of California and 109 PAGA Members. Average Individual PAGA Payments are approximately $57.34, with the highest estimated Individual PAGA Payment being $102.87. This Settlement represents an excellent result in light of the significant litigation risks and defenses raised by Defendant. Following the mailing of the Court-approved notice, no Class Action Member objected or opted out, resulting in a 100% participation rate.

As discussed below, the Court should grant Plaintiff's Motion in its entirety because: (1) the Settlement Class continues to satisfy the requirements for certification under Code of Civil Procedure § 382; (2) the Settlement is fair, adequate, and reasonable in light of the Parties' disputes and litigation risks; and (3) the requested awards for attorneys' fees and costs, the Class Representative Service Payment, the California Labor and Workforce Development Agency ("LWDA") payment, and settlement administration expenses are all reasonable and supported. Accordingly, the Court should enter the [Proposed] Judgment and Order submitted herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant operates as a commercial electrical subcontractor in San Diego, California. *See* Declaration of Andrew J. Rowbotham ("Rowbotham Decl."), ¶ 9. Defendant employed Plaintiff as a non-exempt "Electrical Contractor" from approximately September 2021 to June 2023. *Id.*; *See* Declaration of Daniel McCabe ("McCabe Decl."), ¶ 2. Plaintiff's job duties included reviewing blueprint layouts of job sites, running electrical wires, hanging lights, working on roofs, and other electrical work. *Id*. Like all Class Action Members, Plaintiff was subject to Defendant's wage and hour policies and practices. *See* Rowbotham Decl., ¶ 9.

On March 15, 2024, Plaintiff filed the initial Complaint asserting eight causes of action for: (1) failure to pay all overtime wages (Labor Code §§ 204, 510, 558, 1194, 1198); (2) minimum wage violations (Labor Code §§ 1182.12, 1194, 1194.2, 1197); (3) meal period violations (Labor Code §§ 226.7, 512, 558); (4) rest period violations (Labor Code §§ 226.7, 516, 558); (5) failure to reimburse necessary business expenses (Labor Code §§ 2802, 2804); (6) wage statement violations (Labor Code § 226 *et seq*.); (7) waiting time penalties (Labor Code §§ 201-203); and (8) unfair competition (Bus. & Prof. Code § 17200 *et seq*.). *See* Rowbotham Decl., ¶ 10. On May 23, 2024, Plaintiff filed the operative First Amended Complaint ("FAC"), adding a cause of action for civil penalties under PAGA based on the underlying Labor Code violations alleged in the initial complaint and Plaintiff's March 18, 2024, letter to the LWDA. *Id*.

Prior to reaching this proposed Settlement, Defendant provided Plaintiff with an approximate 25% sample of handwritten timekeeping records and payroll records for employees who worked during the Class Action Period and also provided classwide data points and the employee handbook in effect during the Class Action Period. *See* Rowbotham Decl., ¶ 11. Plaintiff's counsel retained Dr. J. Michael DuMond, Ph.D., and his team at Berkeley Research Group to assist with analyzing Defendant's records. *Id*. Using the mediation documents, Dr. DuMond and his team prepared a detailed exposure analysis. *Id*.

On April 1, 2025, the Parties participated in mediation with respected wage and hour class action mediator Abe Melamed, Esq. *See* Rowbotham Decl., ¶ 12. During mediation, the Parties exchanged divergent views on Defendant's liability, exposure, and underlying legal positions. *Id*. With the help of a mediator's proposal from Mr. Melamed, the Parties were able to reach a class-wide resolution of all claims. *Id*. Mr. Melamed's proposal accounted for Defendant's financial ability to pay and the necessity of a payment plan to ensure Defendant could meet its obligations throughout the payment timeline. *Id.* Over the following months, the Parties finalized the Settlement terms that were memorialized in the Class Action and PAGA Action Settlement Agreement ("Settlement Agreement"), which the Court preliminarily approved on October 23, 2025. *See* Rowbotham Decl., Exhibit 1 (Preliminary Approval Order). Plaintiff provided the LWDA with the Settlement Agreement along with all moving papers associated with the Motion for Preliminary Approval. *See* Rowbotham Decl., ¶ 12, Exhibit 2 (LWDA Submission Confirmation).

On November 26, 2025, Apex Class Action, LLC ("Apex"), the Court-appointed Settlement Administrator, mailed the Court-approved Settlement Notice via U.S. First Class Mail to all 188 individuals on the Class List. *See* Declaration of Katie Tran ("Tran Decl."), ¶ 7, Exhibit A (Settlement Notice). Class Action Members had until January 26, 2026, to submit any disputes, objections, or requests for exclusion (the "Response Deadline"). *Id.,* ¶¶ 11-13. As of the Response Deadline, Apex received no objections, no requests for exclusion, and no disputes, resulting in 100% participation. *Id.*, ¶ 14.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

The Settlement Class includes: "All current and former non-exempt and/or hourly-paid employees who worked for Defendant in the State of California at any time from March 15, 2020 to June 26, 2025." *See* Rowbotham Decl., Exhibit 1.

B. Monetary Terms

Defendant will pay a non-reversionary Gross Settlement Amount ("GSA") of $500,000.00. *See* Settlement Agreement §§ 1.9, 3.1, 4.3. The Net Settlement Amount ("NSA") is the remainder after deducting Court-approved amounts for attorneys' fees ($166,666.67), verified cost reimbursement ($27,234.10)[2], the Class Representative Service Payment ($10,000.00),

[2] Class Counsel's cost records reflect $27,000.33 in out-of-pocket litigation expenses incurred to date. *See* Rowbotham Decl., ¶ 15, Exhibit 3 (Cost Records). Plaintiff seeks reimbursement of a total of $27,234.10, which includes an additional $233.77 in reasonably anticipated future costs. These projected costs are associated with the filing and service of the Motion for Final Approval, which will be incurred following submission of this motion, as well as the cost of the Settlement

settlement administration costs ($6,750.00), and the entire amount designated as the PAGA Settlement Amount ($25,000.00). *See id*., §§ 1.9, 1.15; Rowbotham Decl., ¶ 16, Exhibit 3 (Cost Records). Based on these requested amounts, the NSA is $264,349.23. *See* Tran Decl., ¶ 15.

For tax purposes, each Individual Class Action Payment will be allocated as follows: 10% will be classified as wages (subject to applicable withholdings) and 90% will be classified as interest and penalties (not subject to withholdings). *See* Settlement Agreement § 3.2.4.2. The Individual PAGA Payments payable to the PAGA Members will be allocated 100% to penalties (not subject to withholdings). *Id*. at § 3.2.5.2. Further, Defendant will separately pay the employer's share of payroll taxes in addition to the GSA. *Id*. at § 3.2.4.3.

C. <u>Summary of Notice Process</u>

On November 6, 2025, Defendant provided Apex with a class list containing the names, last known mailing addresses, Social Security numbers, employment dates, and relevant workweek information for each potential Class Action Member during the Class Action Period. *See* Tran Decl., ¶ 5. After verifying and updating addresses using the National Change of Address database, Apex mailed the Court-approved Settlement Notice to all 188 Class Action Members on November 26, 2025. *Id.* ¶¶ 6-7. Following the initial mailing, 35 Settlement Notices were returned as undeliverable. *Id.*, ¶ 8. Apex performed a skip trace to locate updated addresses, resulting in the successful re-mailing of 31 Settlement Notices. *Id.*, ¶¶ 8-9. Ultimately, 4 Settlement Notices remain undeliverable. *Id.*, ¶ 10.

Class Action Members had until January 26, 2026, to submit objections, disputes, or requests for exclusion. *See* Tran Decl., ¶¶ 11-13. As of that date, Apex received no objections, no requests for exclusion, and no disputes, resulting in a 100% participation rate. *Id.*, ¶ 14.

D. <u>Timing of Payments</u>

Defendant will fund the Gross Settlement Amount in three (3) equal installments of $166,666.67. Defendant will pay the first installment within 12 months after entry of Judgment

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Administrator's final accounting declaration, which will be prepared after disbursement of the Settlement proceeds and expiration of the check cashing deadline. These costs are both foreseeable and necessary to fully implement the terms of the Settlement and to complete the final approval process.

granting final approval of the Settlement. Defendant will pay each subsequent installment within 12 months after the prior installment, so that all three (3) installments are paid within three (3) years after entry of Judgment. *See* Settlement Agreement § 4.3.

Within 14 calendar days after Defendant's final installment payment, the Settlement Administrator will mail checks for Individual Class Action Payments and Individual PAGA Payments. Within that same time period, the Settlement Administrator will also disburse the LWDA PAGA Payment, the Service Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment. *See* Settlement Agreement § 4.4. Class Action Members and PAGA Members will have 180 calendar days from the mailing date to cash their checks. *Id*., § 4.4.1. Any uncashed checks remaining after that period will be submitted to the California State Controller's Unclaimed Property Fund in the name of the intended recipient. *Id*., § 4.4.3.

The Parties submit that the distribution method outlined in the Settlement is reasonable and consistent with a party-selected distribution under California law. Because all uncashed funds will be remitted to the State, no portion of the GSA will remain "unpaid, unclaimed, or abandoned," and California Code of Civil Procedure § 384 does not apply.

IV. ARGUMENT

A. The Court Should Confirm Certification of the Settlement Class Under § 382

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable, and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest, and common questions of law and fact predominate over individual issues; (3) the representative's claims are typical of the class's claims; and (4) the representative will fairly and adequately represent the class's interests. *See Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 470.

Here, the Court determined that the Settlement Class satisfies all requirements for class certification for settlement purposes when it granted preliminary approval on October 23, 2025. *See* Rowbotham Decl., Exhibit 1. Since then, no events have undermined this determination. To the contrary, the Settlement Class has overwhelmingly supported the Settlement, with no objections and 100% participation. *See* Tran Decl., ¶ 14. Accordingly, the Court should confirm its conditional certification of the Settlement Class.

B. <u>Settlement Merits Final Approval as Fair and Reasonable</u>

California courts strongly favor settlement. *See Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class action settlements require court approval to prevent fraud, collusion, and unfairness to class members. *See Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79. This process includes preliminary approval, notice to class members, and a final fairness and approval hearing, where class members may be heard regarding the settlement.

Now that the Settlement Administrator has provided notice to the Settlement Class, Plaintiff respectfully requests that the Court grant final approval of the Settlement as fair, adequate, and reasonable.

1. The Settlement Was Reached Through Arm's-Length Negotiations

A settlement is presumptively fair when it is reached through arm's-length bargaining, based on sufficient discovery and investigation to allow counsel and the Court to act intelligently, involves experienced counsel, and faces minimal objections. *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1802. A trial court has broad discretion in determining whether a proposed settlement is fair under the circumstances. *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438. The primary concern in exercising this discretion is ensuring that the settlement is "fair, adequate, and reasonable." *Dunk, supra*, 48 Cal.App.4th at 1801 (internal quotations omitted).

Relevant factors include:

> [T]he strength of plaintiff's case, the risk, expense, complexity, and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

These factors require balancing, are non-exhaustive, and should be tailored to each case, giving due regard to "what is otherwise a private consensual agreement between the parties." *Id*.

"In the context of a settlement agreement, the test is not the maximum amount Plaintiff might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 250. Settlements inherently involve compromise, and even those providing substantially narrower relief than might be obtained at trial can be reasonable because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id*. (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc*., 455 F.2d 101, 109 (7th Cir. 1972)).

Here, the Settlement resulted from extensive arm's-length negotiations between experienced counsel with the assistance of a respected neutral mediator. The Settlement is fair, adequate, and reasonable for all Class Action Members. While Plaintiff maintains that the claims are meritorious, Plaintiff acknowledges the substantial risks and uncertainty in proceeding with class certification and eventually trial, especially in light of Defendant's precarious financial condition, which justify a downward departure from the maximum exposure that Plaintiff calculated each claim carried.

As detailed in Plaintiff's Motion for Preliminary Approval, Defendant maintains its timekeeping policies and practices comply with California law and that it properly compensates Class Action Members for all hours worked. *See* Rowbotham Decl., ¶ 17. Defendant denies requiring employees to work outside of scheduled shift times or during meal periods. *Id*. In fact, Defendant's written handbook policies prohibit employees from working outside of their scheduled shift hours. *Id*. Finally, Defendant contends this claim is not suitable for class treatment because it requires individualized inquiries into whether any employee was required to work off the clock, and the amount of time spent off the clock on any given day. *Id.* Defendant argues this is especially difficult since employees reported to different worksites and off-the-clock time is inherently unrecorded, resulting in an unmanageable series of mini-trials. *Id.*

Defendant argues it maintained lawful meal period policies and practices throughout the Class Action Period, that it provided meal periods consistent with those policies, and that it is only required to "provide" the opportunity to take meal periods, not "ensure" they are taken. *See* Rowbotham Decl., ¶ 18; *see Brinker Restaurant Corp. v. Superior Court* (2012) 54 Cal.4th 1004, 1038 (rejecting "ensure" standard and holding employers only have to "provide" employees the opportunity to take meal periods). Specifically, Defendant asserts that even if its written meal period policy was not explicit as to the timing of meal periods, employees were verbally notified that meal periods would be provided before the end of the fifth hour of work and before the tenth hour on shifts in excess of 10.0 hours. *See* Rowbotham Decl., ¶ 18. Moreover, Defendant maintains that its time records show substantial compliance with timely meal periods. *Id*. Defendant further maintains that any meal period violations reflected in timekeeping records were the result of employee choice, not Defendant's policies, thereby precluding liability. *Id*. Defendant also contends that employees validly waived second meal periods on shifts over 10 hours. *Id*. Defendant argues individualized inquiries will be required to determine why meal periods were late, short, or missed, whether a valid waiver existed, and whether a premium was paid on each shift, thereby precluding class certification of this claim. *Id*.

Defendant also disputes Plaintiff's claim that Defendant maintained a practice of allowing only a single 20-minute rest period during the workday. *See* Rowbotham Decl., ¶ 19. Defendant asserts it does not maintain a written rest period policy or practice requiring employees to take only a single 20-minute rest period per shift, that employees were free to take rest periods at the time of their choosing, and that this claim will fail on the merits. *Id*. Defendant also asserts that this claim is unmanageable and not suited for class certification because it requires individualized inquiries into whether each employee was authorized and permitted to take a lawful rest period and on which days. *Id.* Defendant argues Plaintiff cannot substantiate this claim with common documentary evidence, since rest periods are not required to be recorded, resulting in an unmanageable series of mini-trials. *Id*.

Defendant contends that it reimbursed all necessary business expenses, contrary to Plaintiff's assertions. *See* Rowbotham Decl., ¶ 20. Defendant argues it provided walkie-talkies to employees for communications during the workday, limiting any need to use personal cellular phones. *Id.* Defendant contends that any personal cellular phone use was a result of employee choice. *Id.* Defendant also maintains that this claim is not suitable for class certification because individual issues would predominate in determining which, if any, employees used their personal cellular phones instead of the walkie-talkies provided by Defendant, resulting in an unmanageable series of mini-trials. *Id.*

In response to Plaintiff's claim that Defendant failed to correctly include the value of non-discretionary semi-annual incentive bonuses when calculating the employees' regular rates of pay for overtime and sick pay, Defendant contends that this additional compensation was discretionary. *See* Rowbotham Decl., ¶ 21. Defendant asserts that this claim is unmanageable because it requires individualized inquiries into each bonus payment to determine how the bonus was earned, whether each employee met the terms, whether Defendant communicated the criteria to employees, and whether any underpayment of overtime or sick pay resulted. *Id.* Defendant further argues these inquiries will result in an unmanageable series of mini-trials. *Id.* Additionally, even if sick pay was underpaid, Defendant argues that Labor Code § 246(l)(1) does not provide a standalone cause of action. *Id.*

For Plaintiff's derivative claims for wage statement, waiting time, and PAGA penalties, Defendant argues that these claims fail if the underlying claims fail. *See* Rowbotham Decl., ¶ 22; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant argues that the alleged wage statement violations were not "knowing and intentional," and that Plaintiff cannot show he "suffer[ed] injury," as required by Labor Code § 226(e) for imposition of penalties. *See* Rowbotham Decl., ¶ 22; *see Price, supra,* 192 Cal.App.4th at 1142 ("To recover damages under section 226, subdivision (e), an employee must suffer injury as a result of a knowing and intentional failure by an employer to comply with the statute.") Defendant further contends that it possesses strong good-faith defenses to Plaintiff's underlying claims, thereby precluding recovery of waiting time penalties, which are available only for the "willful" failure to pay wages. *See* Rowbotham Decl., ¶ 22; *see* 8 Cal. Code Regs. § 13520 ("A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203.") Defendant also maintains that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if Defendant were found liable for Plaintiff's underlying claims. *See* Rowbotham Decl., ¶ 22.

These considerations heavily influenced the Settlement negotiations and confirm that the Settlement is fair, adequate, and reasonable given the risks of continued litigation. As detailed in Plaintiff's Motion for Preliminary Approval, Plaintiff, Class Counsel, and Plaintiff's expert conducted a detailed analysis of Defendant's data to determine the calculated damages figures. Only after this comprehensive analysis did the Parties participate in mediation and ultimately accept the mediator's proposal for the Settlement now before the Court. Thus, while these risks are not exhaustive, they demonstrate that the Settlement is fair, adequate, and reasonable.

2. Settlement Compensation Is Fair, Adequate, and Proportional

Apex will calculate and distribute Individual Class Action Payments based on each participating Class Action Member's pro rata share of the Net Settlement Amount. *See* Settlement Agreement § 3.2.4.1. Apex will calculate each Individual Class Action Payment by: (a) dividing the amount of the Net Settlement Amount by the total number of Class Action workweeks worked by all Class Action Members during the Class Action Period and (b) multiplying the result by each Class Action Member's Class Action workweeks. *Id.*

In addition, 25% of the $25,000.00 in PAGA penalties (i.e., $6,250.00) will be distributed to all 109 PAGA Members. *See* Settlement Agreement § 3.2.5. Apex will calculate each Individual PAGA Payment by: (a) dividing the amount of the PAGA Members' 25% share of PAGA Penalties by the total number of PAGA workweeks worked by all PAGA Members during the PAGA Period, and (b) multiplying the result by each PAGA Member's PAGA workweeks. *Id.*, § 3.2.5.1.

This distribution methodology fairly compensates Class Action Members and PAGA Members in proportion to the extent of their alleged exposure to wage and hour violations, with higher payments allocated to those who worked more weeks. The formula is directly tied to the damages and penalties that employees could have recovered at trial and is therefore fair, adequate, and reasonable.

3. The 100% Participation Rate Supports Final Approval

The Class Action Members' response is a relevant factor in determining whether the Settlement merits final approval. *Dunk, supra*, 48 Cal.App.4th at 1801. Moreover, the absence of objections and requests for exclusion supports a presumption of fairness. *See 7-Eleven Owners for Fair Franchising v. Southland Corp*. (2000) 85 Cal.App.4th 1135, 1152-53 (finding that 9 objections and 80 opt-outs from a class of 5,454 demonstrated a "particularly impressive" favorable response).

Here, no Class Action Member objected to or opted out, resulting in a 100% participation rate. *See* Tran Decl., ¶ 14. This overwhelmingly positive response further confirms that the Settlement is fair, adequate, and reasonable.

C. <u>The Requested Fee Award Is Reasonable Under the Percentage Method</u>

Plaintiff and the Settlement Class are entitled to recover attorneys' fees and costs for their wage claims. *See* Labor Code §§ 226(e), 1194, and 2699(g). A fee award is justified when legal action produces benefits through a voluntary settlement. *See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (finding that when a plaintiff secures a common fund for a group, attorneys' fees may be awarded from that fund).

California state and federal courts routinely award one-third of the settlement fund in class actions. *See Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 66, fn. 11; *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 254 (recognizing the "percentage of recovery" method); *In re Pacific Enterprises Securities Litig*., 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award). The California Supreme Court has also endorsed the "percentage of fund" method. *See Laffitte v. Robert Half Int'l, Inc*. (2016) 1 Cal.5th 480, 506 (holding that the percentage method is a valuable tool and aligns attorney incentives with class interests).

The *Laffitte* Court reasoned:

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

Id. at 503 (internal citation omitted); *see also Rawlings v. Prudential-Bache Properties, Inc*., 9 F.3d 513, 516 (6th Cir. 1993) (holding that the percentage of fund method better reflects results achieved than the lodestar method and encourages early settlement); *In re Rite Aid Corp. Securities Litig*., 396 F.3d 294, 300 (3d Cir. 2005) (favoring percentage-of-recovery in common fund cases as it rewards success and penalizes failure). This is consistent with Class Counsel's experience in similar wage-and-hour class action matters. *See* Rowbotham Decl., ¶ 23.

Here, Class Counsel seeks $166,666.67, representing one-third of the GSA, consistent with *Laffitte* and prevailing class action practices. *See* Rowbotham Decl., ¶ 23. As discussed above, this case presented significant risks to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and for expending considerable effort, all while working on a pure contingency basis. Class Counsel's efforts include conducting a pre-filing investigation, retaining an expert and analyzing Plaintiff's claims, performing legal research, reviewing documents and data produced by Defendant, building a damages model, preparing for and attending mediation, negotiating and drafting the long-form Settlement Agreement and Settlement Notice documents, preparing the Motions for Preliminary and Final Approval, overseeing the Notice process, and otherwise litigating the case. *Id*. Class Counsel will also expend future attorney time attending the hearing on this Motion, overseeing the disbursement process, and reviewing and filing the Settlement Administrator's final accounting declaration with the Court, among other tasks. *Id*. Given the considerable potential for adverse outcomes in this case, including, but not limited to, losing on class certification, and accounting for Defendant's precarious financial condition, the contingent risk borne by Class Counsel was great. The quality of Class Counsel's work, and the efficacy and dedication with which it was performed, should be equivalently compensated.

Class Counsel are highly experienced in both plaintiff and defense-side wage and hour class action litigation and collectively bring decades of experience in class and representative employment matters. *See* Rowbotham Decl., ¶¶ 2-8; *see also* Declaration of Paul K. Haines; Declaration of Fletcher W. Schmidt; and Declaration of Susan J. Perez. They have been appointed class counsel in numerous certified class actions in both state and federal courts. *Id.* This experience was instrumental in assessing the strengths and weaknesses of Plaintiff's claims, evaluating the risks of continued litigation, and negotiating a fair and adequate resolution. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class action litigation. In light of Class Counsel's skill, reputation, and substantial experience, the requested fee award of one-third of the Gross Settlement Amount is fair and reasonable and should be approved.

D. The Requested Cost Reimbursement Warrants Final Approval

Class Counsel incurred and respectfully requests reimbursement of $27,234.10 in litigation costs, which is significantly less than the $40,000.00 amount preliminarily approved by the Court in the Settlement Agreement. *See* Rowbotham Decl., ¶ 24, Exhibits 1, 3-4[3]; *see* Settlement Agreement, § 3.2.2. The unclaimed portion of litigation costs will be distributed to Class Action Members as part of the NSA. *Id*.

Class Counsel's request is fair, adequate, and reasonable, as all costs are documented and reasonably incurred. Rowbotham Decl., Exhibit 3. Courts routinely approve reimbursement for these types of litigation expenses. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel may recover "those out-of-pocket expenses that would normally be charged to a fee-paying client"); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at *3 (N.D. Cal. 2011) ("costs of reproducing pleadings, motions, and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of Const. Industry & Laborers Health & Welfare Trust v. Redland Ins. Co*. (9th Cir. 2006) 460 F.3d 1253, 1258-59 (legal research costs are reimbursable); *In re Immune Response Securities Litig*., 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, legal research, copies, postage, filing fees, messenger, and overnight delivery costs are reimbursable).

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[3] Class Counsel retained Dr. J. Michael DuMond, Ph.D., of Berkeley Research Group, to perform expert analyses supporting Plaintiff's claims. Dr. DuMond's invoices are submitted herewith in support of the request for reimbursement of litigation costs. Rowbotham Decl., ¶ 24, Exhibit 4 (Expert Invoices).

Notably, no Class Action Member objected to the Settlement, including Class Counsel's request for up to $40,000.00 in litigation cost reimbursement. *See* Tran Decl., ¶ 12. Since the requested expenses were reasonably incurred, and no objections were raised, the Court should grant Class Counsel's request for $27,234.10 in litigation cost reimbursement.

E. The Court Should Finally Approve the Settlement Administration Costs

Plaintiff also requests that the Court approve $6,750.00 in administration costs to Apex, the Court-appointed Settlement Administrator. *See* Rowbotham Decl., ¶ 26; Tran Decl., ¶ 18, Exhibit B (Apex Bid). As detailed in the Declaration of Katie Tran, Apex performed all essential duties required to administer the Settlement and implement the Court-approved Notice process. Specifically, Apex verified and updated mailing addresses based on the class data provided by Defendant, formatted and mailed Settlement Notices to all 188 Class Action Members, calculated each Individual Class Action Payment, and provided the Parties with regular status updates throughout the notice period. Apex also performed additional administrative tasks necessary to effectuate the Settlement, including handling skip tracing, exclusion tracking, and dispute resolution procedures. *See generally* Tran Decl. Accordingly, the requested administration costs are fair, reasonable, and consistent with the scope of work required under the Settlement Agreement and should be granted final approval.

F. The Court Should Approve the Requested Service Award

Courts routinely approve service payments to compensate named plaintiffs for their efforts and the risks they assume in class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding service payments for efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a $50,000.00 service payment).

Here, Plaintiff seeks a Class Representative Service Payment of $10,000.00, which is reasonable given his substantial efforts in this case, the risks he undertook on behalf of the Settlement Class, and his agreement to a general release of claims, including a waiver of California Civil Code § 1542. *See* Rowbotham Decl., ¶ 27; McCabe Decl., ¶ 6-7; Settlement Agreement §§ 3.2.1, 5.1-5.1.1. This amount is well within the range of service awards regularly approved by California courts. *See, e.g., Fidelina Rangel v. Forest River, Inc.*, Case No. CIVD1706616, San Bernardino County Superior Court, Hon. David Cohn, presiding (awarding $10,000 enhancement to the named plaintiff); *Anthony Controulis, et al. v. Anheuser-Busch, LLC*, Case No. BC518518, Los Angeles County Superior Court (awarding $10,000 enhancement to each of two named plaintiffs); *Damontae Levinston, et al. v. Commerce Distribution Company LLC, et al.*, Case No. 22STCV05730, Los Angeles County Superior Court (awarding $10,000 enhancement to each of four named plaintiffs); *Torres Dawson, et al. v. Wonderful Pistachios and Almonds, LLC*, Kern County Superior Court, Case No. BCV-17-100848 (same); *Koreisz v. On Q Financial Inc.*, Ventura County Superior Court, Case No. 56-2018-00517126-CU-OE-VTA (same).

Plaintiff's contributions to this case were extensive. Specifically, Plaintiff provided factual information and documents to his attorneys, participated in various conversations with his attorneys to discuss the claims, litigation strategy, and Defendant's policies and practices, spent a significant amount of time communicating with his attorneys to help them prepare for mediation, and made himself available the entire day of mediation to help resolve factual disputes. *See* Rowbotham Decl., ¶ 28; McCabe Decl., ¶ 7. Additionally, Plaintiff undertook significant risks by agreeing to serve as the named plaintiff in this case (as potential employers can now search his name and determine he has previously sued an employer), and he agreed to a general release of all claims subject to a waiver of California Civil Code § 1542, which is a broader general release than what other Class Action Members provided. *See* Rowbotham Decl., ¶ 28.

Plaintiff spent between 20 and 30 hours performing these duties for the Class Action Members. *See* McCabe Decl., ¶ 7. Plaintiff's participation directly benefited the Settlement Class, as they would not be receiving compensation absent his decision to pursue these claims. *See* Rowbotham Decl., ¶ 28. Moreover, after receiving notice of the proposed Service Payment, no Class Action Member objected. *See* Tran Decl., ¶ 12. Accordingly, Plaintiff's request for a $10,000.00 Service Payment is fair, reasonable, and justified and should be finally approved.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion in its entirety and enter the [Proposed] Judgment and Order Granting Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class Representative Service Payment, submitted herewith.

Dated: February 19, 2026

Respectfully submitted,
HAINES LAW GROUP, APC

By: ______________________
Andrew J. Rowbotham
Attorneys for Plaintiff