

JUSTICE FOR WORKERS, P.C.
William C. Sung SB# 280792
E-Mail: william@justiceforworkers.com
Tiffany L. Luu SB# 335127
E-Mail: tluu@justiceforworkers.com
3600 Wilshire Boulevard, Suite 1815
Los Angeles, CA 90010
Tel: 323-922-2000
Fax: 323-922-2000

Attorneys for Plaintiff KATHERINE VERGARA POLANCO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

KATHERINE VERGARA POLANCO, an
individual and on behalf of all others similarly
situated;

Plaintiff,

vs.

ESCALETTE, LLC, a California corporation;
and DOES 1 through 50,

Defendants.

Case No.: 30-2024-01407947-CU-OE-CXC

[Assigned for All Purposes to:
Hon. William Claster, Dept. CX101]

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

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

DATE: October 16, 2026

TIME: 9:00 a.m.

DEPT: CX101

Reservation ID: Per May 16, 2026 Court
Order

Action Filed: June 18, 2024

Trial Date: Not Set

1 THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:
2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court and
3 California Code of Civil Procedure § 382, on October 16, 2026 at 9:00 a.m. in Department CX101 of the
4 Civil Complex Center, Orange Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, CA
5 92701, Plaintiff Katherine Vergara Polanco (“Plaintiff”) individually and on behalf of a class of
6 similarly situated individuals, will and hereby do move this Court for entry of an Order:

- 7 1. Granting final approval of the Settlement;
- 8 2. Approving distribution of the settlement funds to the Class Members pursuant to the
9 terms of the Settlement;
- 10 3. Approving distribution of PAGA penalties to the LWDA and Aggrieved Employees
11 pursuant to the terms of the Settlement;
- 12 4. Approving Plaintiff’s request for Class Representative Service Payment of \$10,000.00;
- 13 5. Approving Plaintiff’s request for an award of attorneys’ fees to Class Counsel of 33 1/3%
14 of the Gross Settlement Amount, totaling \$181,195.59;
- 15 6. Approving Plaintiff’s request for reimbursement of litigation costs of \$10,374.53;
- 16 7. Approving Plaintiff’s request for payment of settlement administration costs to Apex
17 Class Action LLC in the amount of \$7,650.00; and
- 18 8. That the Court enter final judgment as to all members of the Class in this action.

19 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for
20 court approval of the settlement of a purported class action and allows the Court to grant final
21 certification of a class for settlement purposes. In light of the overwhelmingly positive response, as
22 shown by the lack of any objections or opts-out, there is no question that the settlement is fair,
23 reasonable, and adequate and thus should be granted final approval.

24 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
25 Authorities; the supporting declarations of William C. Sung, Madely Nava of Apex Class Action LLC,
26 and the exhibits attached thereto; the Agreement and Amendment; the pleadings, and other papers filed
27 in this Action; and on any further oral or documentary evidence or argument presented at the time of the
28 hearing.

1
2
3 DATED: September 18, 2026

Respectfully submitted,

JUSTICE FOR WORKERS, P.C.



By:

William C. Sung

Tiffany L. Luu

Joseph C. Ramli

Attorneys for Plaintiff

KATHERINE VERGARA POLANCO

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. THE PAYMENTS TO THE SETTLEMENT CLASS & AGGRIEVED EMPLOYEES	1
III. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT	2
IV. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE	3
A. The Terms, Negotiation, and Reception of the Settlement by Class Members Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable	3
B. Under Well-Established Legal Principles, the Court Should Grant Final Approval.....	4
1. Standard of Review	4
2. The Settlement is Presumed to Be Fair	6
3. The Risks Inherent in Continued Litigation Favor Final Approval	6
4. The Complexity, Expense, and Likely Duration of Continued Litigation Against Defendant Favor Final Approval.....	9
5. The Opinion of Experienced Counsel Favors Final Approval	10
V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED	10
A. The Requested Attorney's Fee Award of a Percentage of the Gross Settlement Amount Is Fair and Reasonable Under the Common Fund Doctrine	11
B. The Requested Fee Award is Fair and Reasonable Under Other Factors	14
1. The Results Achieved.....	14
2. The Significant Amount of Time Spent and the Quality of the Labor Performed by Class Counsel Justifies the Requested Fee	15
3. The Contingent Fee and the Financial Burden Borne by Class Counsel	16
4. The Requested Fees Matches the Market Rate in Similar Litigation.	17
5. The Skill, Experience, Reputation, Ability, and Quality of Counsel.	17
VI. THE COURT SHOULD APPROVE THE REQUEST FOR ATTORNEY'S COSTS	18
VII. THE REQUESTED SERVICE PAYMENT SHOULD BE APPROVED.....	18
VIII. THE SETTLEMENT ADMINISTRATOR'S FEES SHOULD BE APPROVED	19
IX. SERVICE OF MOVING PAPERS ON LWDA	19
X. CONCLUSION	19

TABLE OF AUTHORITIES

State Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135.....	6
<i>Amaral v. Cintas Corp.</i> (2008) 163 Cal.App.4th 1157	16
<i>Brinker Rest. Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004	7
<i>Camp v. Home Depot U.S.A., Inc.</i> (2022) 84 Cal.App.5th 638.....	6
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal. App. 5th 504	8
<i>Cazares v. Saenz</i> (1989) 208 Cal.App.3d 279.....	16
<i>Chavez v. Netflix</i> (2008) 162 Cal.App.4th 43.....	12, 13, 17
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794.....	5, 6, 14
<i>Glendora Cmty. Redev. Agency v. Demeter</i> (1984) 155 Cal.App.3d 465	12
<i>In re Sutter Health Uninsured Pricing Cases</i> (2009) 171 Cal.App.4th 495	12, 13
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122.....	11, 16
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	3
<i>Laffitte v. Robert Half Int'l Inc.</i> (2016) 1 Cal. 5th 480	10, 11, 17
<i>MBNA America Bank, N.A. v. Gorman</i> (2006) 147 Cal.App.4th.Supp. 1	12
<i>Naranjo v. Spectrum Security Services, Inc.</i> (2024) 15 Cal.5th 1056	8
<i>Nordstrom Com. Cases</i> (2010) 186 Cal.App.4th 576	9
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25.....	14, 16
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	12, 13

Federal Cases

<i>Ackerman v. Kassar</i> (9th Cir. 1993) 1993 WL 326453.....	5
<i>Aikhan v. Goodrich Corporation</i> (C.D. Cal. June 25, 2020) 2020 WL 49191382	18
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472	11
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F.Supp. 610	6, 10
<i>Chun–Hoon v. McKee Foods Corp.</i> (N.D. Cal. 2010) 716 F.Supp.2d 848.....	4
<i>Church v. Consolidated Freightways, Inc.</i> (N.D. Cal. 1993) 1993 WL 149840.....	5

1	<i>Churchill Vill. LLC v. Gen. Elec.</i> (9th Cir. 2004) 361 F.3d 566	4
2	<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1992) 955 F.2d 1268	4, 5
3	<i>Djukich v. AutoNation, Inc.</i> (C.D. Cal. Nov. 12, 2015) 2015 WL 13756099	18
4	<i>Eisen v. Carlisle & Jacquelin</i> (1974) 417 U.S. 156	3
5	<i>Hensley v. Eckerhart</i> (1983) 461 U.S. 424.....	14
6	<i>Herrera v. Federal Express Corporation</i> (C.D. Cal. March 31, 2020) 2020 WL 2951122	18
7	<i>In re General Motors Corp.</i> (3d Cir. 1995) 55 F.3d 768.....	6
8	<i>In re Warner Communications</i> (S.D.N.Y 1985) 618 F.Supp. 735	11
9	<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> (D. Ariz. 1989) 720 F.Supp. 1379	5
10	<i>Linney v. Cellular Alaska P'ship</i> (9th Cir. 1998) 151 F.3d 1234.....	5, 10
11	<i>Magadia v. Wal-Mart Associates, Inc.</i> (9th Cir. 2021) 999 F.3d 668	15
12	<i>New York Gaslight Club, Inc. v. Carey</i> (1980) 447 U.S. 54	11
13	<i>O'Conner v. Uber Technologies, Inc.</i> (9th Cir. 2018) 904 F.3d 1087	15
14	<i>Officers for Justice v. Civil Serv. Comm'n</i> (9th Cir. 1982) 688 F.2d 615	5, 9, 10
15	<i>Phillips Petroleum Co. v. Shutts</i> (1985) 472 U.S. 797	3
16	<i>Potter v. Big Text Trailer Manufacturing, Inc.</i> (C.D. Cal. March 20, 2020) 2020 WL 1942619	18
17	<i>Smith v. Experian Information Solutions, Inc.</i> (C.D. Cal. Nov. 9, 2020) 2020 WL 6689209.....	18
18	<i>Thomas v. Cognizant Technology Solutions U.S. Corporation</i> (C.D. Cal. June 24, 2013) 2013 WL 12371622	18
19	<i>Van Bronkhorst v. Safeco Corp.</i> (9th Cir. 1976) 529 F.2d 943	5, 10
20	<i>Van Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	12
21	<i>Young v. Katz</i> (5th Cir. 1971) 447 F.2d 431	9
22	Unpublished Cases	
23	<i>Nat. Gas Anti-Trust Cases I, II, III & IV, No. 4221</i> (Cal. Super. Ct. Dec. 11, 2006) 2006 WL 5377849	12
24	Treatises	
25	Alba Conte & Herbert B. Newberg, <i>4 Newberg on Class Actions</i> § 11.41 (4th ed. 2002)	5
26	<i>Manual for Complex Litigation, Fourth</i> , § 21.6.....	5
27	<i>Newberg on Class Actions</i> , § 14:03.....	12
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a wage and hour class and representative PAGA action arising from Defendant Escalette,
4 LLC's ("Defendant") alleged violations of the California Labor Code. Prior to the settlement of this
5 Action, Plaintiff Katherine Vergara Polanco ("Plaintiff") and Defendant (collectively, "Parties")
6 thoroughly investigated the facts relating to the claims alleged in the operative Second Amended
7 Complaint against Defendant. The Parties engaged in pre-mediation informal discovery, including time
8 and payroll records for a 25% sampling of Class Members. Thereafter, the Parties participated in a full
9 day of private mediation, and after two months of post-mediation negotiations, and were ultimately able
10 to reach the current settlement on a class and PAGA representative basis.

11 The terms of the settlement provide that Defendant shall pay a Gross Settlement Amount of
12 \$543,586.77. On average, each of the 245 Participating Class Members will receive approximately
13 \$1,242.31. The Parties believe that this amount is fair, adequate, and reasonable, especially given the
14 risks and uncertainty of class certification and the merits of this case.

15 Further, notice of the settlement was provided to the class by the Administrator in the manner
16 approved by the Court. As of the filing of the Motion, Class Members did not submit a single objection
17 or request for exclusion. Thus, there is a **100%** participation rate. With full support of the Class, the
18 Parties respectfully request that the Court grant final approval of the Settlement.

19 **II. THE PAYMENTS TO THE SETTLEMENT CLASS & AGGRIEVED EMPLOYEES**

20 The Settlement provides for a Gross Settlement Amount of \$543,586.77. Declaration of William
21 C. Sung ("Sung Decl."), ¶ 5; Agreement, §§ 1.12, 1.22, 8¹. The entire Gross Settlement Amount is non-
22 reversionary and no monies will revert back to Defendant. Agreement, § 3.1. The Class is defined as:
23 "All current and former non-exempt employees who worked for Defendant Escalette, LLC within the
24 State of California at any time during the Class Period of June 18, 2020 to November 24, 2025." Order
25 Granting Preliminary Approval, ¶ 1.

26
27 ¹ The Class Action and PAGA Settlement Agreement ("Agreement") is attached as **Exhibit 1** to the Sung Decl.
28 The Amendment to the Class Action and PAGA Settlement Agreement is attached as **Exhibit 2** to the Sung Decl.
The Court's Order Granting Preliminary Approval of Class Action and PAGA Settlement ("Order Granting
Preliminary Approval") is attached as **Exhibit 3** to the Sung Decl.

There are 245 Participating Class Members. Declaration of Madely Nava (“Admin Decl.”), ¶ 14. The Net Settlement Amount is estimated to be \$304,366.65 and is based on:

Gross Settlement Amount	\$543,586.77
Less Class Counsel Fees Payment	(\$181,195.59)
Less Class Counsel Litigation Expenses Payment	(\$10,374.53)
Less Class Representative Service Payment	(\$10,000.00)
Less PAGA Penalties	(\$30,000.00)
Less Settlement Administration Costs	(\$7,650.00)
Net Settlement Amount	\$304,366.65

Admin. Decl., ¶ 15.

Pursuant to the terms of the Settlement, Participating Class Members will receive a proportionate share of the Net Settlement Amount based on the total number of Workweeks worked during the Class Period. Agreement, § 3.2.4. Based on settlement calculations at this time, the estimated average payment to each Class Member will be \$1,242.31, with the highest payment to a Class Member estimated to be \$2,935.65, lowest payment to a Class Member estimated to be \$20.46, and Plaintiff’s share to be \$225.03. Admin. Decl., ¶ 16.

The Settlement allocates \$30,000.00 to PAGA penalties (“PAGA Penalties”), of which 75% or \$22,500.00 shall be paid to the Labor and Workforce Development Agency (“LWDA”), and 25% or \$7,500.00 to Aggrieved Employees. Agreement, § 3.2.5. Aggrieved Employees will receive a proportionate share of \$7,500.00 based on the number of Pay Periods worked during the PAGA Period. *Ibid.* Based on the estimated calculations at this time, the average Individual PAGA Payment to each Aggrieved Employee is estimated to be \$47.77, the highest payment is estimated to be \$47.77, the lowest payment is estimated to be \$1.02, and Plaintiff’s share is \$11.24. Admin. Decl. ¶ 18.

III. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT

On May 19, 2025, the Administrator received the Class Data from Defense Counsel that included 245 Class Members. Admin Decl. ¶ 5. The Administrator conducted an address verification against the National Change of Address database. Admin Decl., ¶ 6. On or about June 4, 2026, the Administrator mailed the Class Notice via first class mail to each of the persons identified in the class list. Admin Decl. ¶ 7, Exh. A – Class Notice. As part of the administration process, 29 Class Notices were returned, the Administrator successfully remailed 14 Class Notices after conducting a skip trace. Admin Decl. ¶ 8. Thus, the Class Notice was delivered to approximately 94% of the Class. *See ibid.*

1 The Class Notice in English and Spanish provided Class Members with Class Counsel’s contact
2 information, where they could further seek information regarding the Settlement, leave questions for the
3 Administrator, and update their address. Admin Decl., ¶ 7, Exh. A – Class Notice Packet. The Response
4 Deadline was August 3, 2026. Admin Decl., ¶ 10. Notably, no Class Member objected to the Settlement,
5 disputed their Workweeks or Pay periods, or requested exclusion, resulting in a **100%** participation rate.
6 Admin Decl., ¶¶ 11-13.

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

18 **IV. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE**

19 **A. The Terms, Negotiation, and Reception of the Settlement by Class Members**

20 **Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable**

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

27 The Settlement was the product of a full day mediation and months of post-mediation negotiation
28 between highly able and experienced attorneys on both sides. *See Sung Decl.*, ¶¶ 4-6. In addition, the

1 resolution of this case was reached only after the production of data relevant to the potential value of the
2 claims. Sung Decl., ¶ 4. Defendant 1) Class and PAGA statistics, including the number of Class
3 Members, formerly employed Class Members, Aggrieved Employees, Class Workweeks, and PAGA
4 Pay Periods; (2) a random 25% sampling of time and payroll records of Class Members; and (3)
5 Defendants' employee handbooks and standalone policy documents. *Ibid.*

6 Based on the data provided by Defendant and with the assistance of its expert data analyst, Class
7 Counsel performed a comprehensive damage analysis and calculated a range of potential damages and
8 penalties. Sung Decl., ¶ 5. As discussed in detail in Plaintiff's Motion for Preliminary Approval, Class
9 Counsel estimated that the potential realistic recovery for the Class would be approximately
10 \$850,569.09. Sung Decl., ¶ 7. The proposed Settlement of the Gross Settlement Amount of \$543,586.77
11 represented approximately 63.91% of the reasonably forecasted recovery for the Class. *Ibid.* Final
12 approval is appropriate since the Settlement will provide significant monetary relief to the Class, which
13 is consistent with what Class Counsel believe could have been recovered had the case proceeded
14 through trial. *Ibid.*

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

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

27 **1. Standard of Review**

28 On a motion for final approval of a class action settlement under California Code of Civil

1 Procedure section 382 and California Rule of Court 3.769, a court’s inquiry is whether the settlement is
2 “fair, adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615,
3 625, *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n* (1983) 459 U.S. 1217. A settlement is fair,
4 adequate, and reasonable, and therefore merits final approval, when “the interests of the class are better
5 served by the settlement than by further litigation.” *See Manual for Complex Litigation, Fourth*, § 21.6
6 at 309 (Fed. Jud. Ctr., 4th ed. 2004 (“*Manual*”). The law favors settlement, particularly in class actions
7 and other complex cases, where substantial resources can be conserved by avoiding the time, cost, and
8 rigors of formal litigation. *See* Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.41
9 (4th ed. 2002); *Class Plaintiffs* 955 F.2d 1268 at 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976)
10 529 F.2d 943, 950.

11 Although a court possesses “broad discretion” in determining that a proposed class action
12 settlement is fair, the court’s role must be limited to the extent necessary to reach a reasoned judgment
13 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
14 parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. *See*
15 *Officers for Justice*, 688 F.2d at 625. A court should give due regard to what is otherwise a “private
16 consensual agreement” between the parties. *Ibid.*; *see also Church v. Consolidated Freightways, Inc.*
17 (N.D. Cal. 1993) 1993 WL 149840; *In re Wash. Pub. Power Supply Sys. Sec. Litig.* (D. Ariz. 1989) 720
18 F.Supp. 1379, *aff’d sub nom.*, *Class Plaintiffs*, 955 F.2d 1268; *Manual for Complex Litigation*, § 21.6 at
19 309 (“The judicial role in reviewing a proposed settlement is critical, but limited to approving the
20 proposed settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the
21 agreement”).

22 A court’s approval of a class action settlement will only be reversed for a clear abuse of
23 discretion. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Officers for Justice*, 688
24 F.2d at 626 (“reverse only upon a strong showing that the district court’s decision was a clear abuse of
25 discretion”); *Class Plaintiffs*, 955 F.2d at 1276; *Ackerman v. Kassar* (9th Cir. 1993) 1993 WL 326453;
26 *Linney v. Cellular Alaska P’ship* (9th Cir. 1998) 151 F.3d 1234, 1238. As the Court of Appeals
27 cautioned:

28 ///

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

5 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.

6 **2. The Settlement is Presumed to Be Fair**

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

8 [A] presumption of fairness exists where: (1) the settlement is reached through arm’s-
9 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
10 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
percentage of objectors is small.

11 *Dunk*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal.App.4th at 1146.

12 The Settlement warrants approval and carries a presumption of fairness. As previously noted in
13 the Motion for Preliminary Approval, this Settlement was negotiated at arm’s length and with the
14 assistance of a neutral mediator. Furthermore, Class Counsel is highly experienced in this type of
15 litigation. As shown in the supporting declarations, Class Counsel has significant experience in class
16 actions and employment wage and hour matters. Sung Decl., ¶¶ 8-11.

17 **3. The Risks Inherent in Continued Litigation Favor Final Approval**

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

24 Here, Defendant has presented defenses to all of Plaintiff’s claims and theories of liability. Sung
25 Decl., ¶ 12. For example, Plaintiff alleged that Defendant unlawfully rounded Class Members’ time
26 punches to the nearest quarter-hour and automatically deducted 30 minutes of compensable hours
27 worked for meal periods during part of the Class Period. *Ibid.* Plaintiff contended that Defendant’s
28 rounding and automatic meal period deduction practices resulted in unpaid wages including overtime.

1 *Ibid*; see *Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, 644, review granted 304
2 Cal.Rptr.3d 82 (reversing summary judgment in favor of Home Depot’s nearest-quarter-hour rounding
3 practice even though the plaintiff did not lose time due to rounding). Sung Decl., ¶ 12.

4 However, Defendant vigorously denied that its practices resulted in unpaid wages. Sung Decl., ¶
5 12. First, Defendant contended that Class Members worked in a manufacturing facility where production
6 operations started at the same time at the beginning of shift, ceased and restarted at the same time during
7 lunch breaks, and ceased at the same time at the end of shift. *Ibid*. Therefore, Class Members were
8 permitted to take timely and off-duty meal periods. *Ibid*. Defendant further argued that it did not
9 implement any practice to systemically deduct meal periods from employees. *Ibid*. Defendant further
10 argued its rounding policies/practices were lawful, since it was both neutral on its face and resulted, over
11 time, in employees being paid for all hours worked. *Ibid*. Defendant also contended that multiple Courts
12 of Appeal have found rounding mechanisms to be lawful under similar circumstances. *Ibid*; see, e.g.,
13 *Ferra v. Loews Hollywood Hotel, LLC* (2019) 40 Cal.App.5th 1239, 1254; *AHMC Healthcare, Inc. v.*
14 *Superior Court* (2018) 24 Cal.App.5th 1014, 1028. Additionally, Defendant argued that any potential
15 damages are limited as Defendant ceased both practices in 2024. Sung Decl., ¶ 12. Defendant argued
16 Plaintiff would be unable to certify a class because of numerous individualized inquiries as to whether
17 Class Members were in fact underpaid, or potentially overpaid, for each workday in question. *Ibid*.
18 Finally, as to all claims, Defendant argued that the LWDA conducted its own investigation, including
19 reviewing records and interviewing approximately multiple Class Members, and found no wrongdoing
20 on the part of Defendant. *Ibid*.

21 Plaintiff claimed that she and other employees were not provided with compliant meal periods
22 because of operational needs and Defendant failed to keep accurate records of their meal breaks due to
23 the alleged meal period automatic deduction practice. Sung Decl., ¶ 13. Defendant countered that it
24 maintained compliant meal period policies and practices throughout the Class Period and always
25 provided compliant meal periods in line with those policies. *Ibid*; see *Brinker Rest. Corp. v. Superior*
26 *Court* (2012) 53 Cal.4th 1004, 1040-1041 (holding employers need only “provide” meal periods to
27 employees and are not obligated to “police” meal periods). Defendant further argued that Class
28 Members worked in a manufacturing facility where production operations ceased and restarted at the

1 same time during lunch breaks, and therefore, Class Member were provided with compliant meal period
2 regardless of what time records might show and any deviation was due to Class Members' own volition.
3 Sung Decl., ¶ 13. As such, Defendant maintained Plaintiff's meal period claim is not suited for class
4 certification since individual inquiries would be needed to assess which employees, if any, took non-
5 compliant meal periods, how many meal periods were non-compliant, and the reasons why a particular
6 employee did not take a meal period on a particular shift and a meal period premium was not paid. *Ibid.*

7 Plaintiff claims that Class Members were not provided with a third rest break when they worked
8 more than 10 hours in a shift. Sung Decl., ¶ 14. Defendant counters that they have maintained compliant
9 rest period policies and practices and provided compliant rest periods in line with those policies. *Ibid.*
10 Defendant further maintained Plaintiff's rest period claim is not suited for class certification since
11 individual inquiries would be needed to assess which employees, if any, took non-compliant rest
12 periods, how many rest periods were non-compliant, and the reasons why a particular employee did not
13 take a rest period on a particular shift. *Ibid.*

14 Plaintiff alleged that Plaintiff and other employees had to use their personal cellphones to
15 communicate for work without reimbursement of cellphone expenses. Sung Decl., ¶ 15. In response,
16 Defendant argued that Class Members worked in a factory and had no reason to use their personal
17 cellphones. *Ibid.* To the extent they used their personal cellphones, it was out of their own convenience
18 and not a reimbursable expense. *Ibid.*

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

26 The PAGA cause of action is similarly derived from underlying claims for unpaid wages and
27 meal and rest period premiums. Sung Decl., ¶ 17. In addition to Defendant's defenses on the merits as
28 discussed above, Defendant also asserted that the Court would drastically reduce any award of PAGA

penalties as “confiscatory.” *Ibid*; see *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 517 (while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law.”).

The risks of this case were weighed by Class Counsel and should be considered a significant factor by the Court in its determination of final approval. Sung Decl., ¶ 18. Class Counsel obtained a very substantial settlement for the Class that resulted in a fair recovery which at the same time provides for finality and no risk of costs by the Class Members or the Class Representative. *Ibid*. The Settlement also affords the Class prompt, fair relief, while avoiding significant legal and factual battles that otherwise may have prevented the Class from obtaining any recovery at all. *Ibid*.

While Class Counsel believe the Class Members’ claims are meritorious and can be successfully litigated, they are experienced and fully understand the inherent risks and uncertainty involved with such matters as the resolution of class certification, the outcome of a potential trial, and the outcome of any appeals that would inevitably follow should the Class prevail at trial. *Ibid*.. Because the Settlement provides immediate and substantial relief, without the attendant risks and delay of continued litigation—not to mention the threat of litigation fees and costs—Class Counsel believe that the Settlement warrants the Court’s final approval. *Ibid*.

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

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

consistent with the “overriding public interest in settling and quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst*, 529 F.2d at 950 (footnote omitted).

5. The Opinion of Experienced Counsel Favors Final Approval

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

V. THE REQUESTED ATTORNEYS’ FEES SHOULD BE APPROVED

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

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

Ibid. (internal citations omitted).

In so doing, the Court recognized the advantages of using the percentage of the common fund method of awarding attorney’s fees, including the “relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.” *Ibid.* The *Laffitte* ruling is consistent with courts nationwide, including the United States Supreme Court, which the California Supreme Court recognized, noting, “[c]urrently, all the circuit courts either mandate or allow their district courts to use the percentage method in common fund cases; none require sole use of the lodestar method [and] [m]ost state courts to consider the question in recent decades have also concluded the percentage method of calculating a fee award is either preferred or

1 within the trial court's discretion in a common fund case." *Id.* at 493-94.

2 **A. The Requested Attorney's Fee Award of a Percentage of the Gross Settlement**
3 **Amount Is Fair and Reasonable Under the Common Fund Doctrine**

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

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

22 In *Laffitte*, the Court approved a lodestar cross-check that resulted in a 2.13 multiplier because
23 the trial court properly considered the lodestar multiplier factors in determining whether to apply a
24 multiplier, including the difficulty of the issues in the case, the skill of class counsel, the contingent
25 nature of the case, and the preclusion of other employment. *Laffitte*, 1 Cal.5th at 504. In assessing the
26 reasonableness of counsel's fee request, courts considered relevant factors such as the level of skill
27 necessary, time limitations imposed by the client or other limitations, the amount to be obtained in the
28 litigation, the attorney's reputation, and the undesirability of the case. *Ketchum v. Moses* (2001) 24

Cal.4th 1122, 1139. “A more difficult legal question typically requires more attorney hours, and a more skillful and experienced attorney will command a higher hourly rate.” *Id.* at 1138-1139. “[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorney’s skill as reflected in the quality of the work, as well as the attorney’s reputation and status.” *MBNA America Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th.Supp. 1, 13.

Fee awards in successful wage and hour and other types of class actions typically exceed by multiples the lodestar value of the time spent by counsel. *See e.g. In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (affirming that multiplier of 2.52 was “fair and reasonable”); *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 66 (affirming award of fees 2.5 times lodestar in consumer class action); *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 (noting that multipliers can range from 2 to 4 or even higher); *Glendora Cmty. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming multiplier of 12); *Nat. Gas Anti-Trust Cases I, II, III & IV, No. 4221* (Cal. Super. Ct. Dec. 11, 2006) 2006 WL 5377849, at *4 (“numerous cases have applied multipliers of between 4 and 12 to counsel’s lodestar in awarding fees.”); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (holding that a multiplier of 3.6 was well within the acceptable range for fee awards in complicated class action litigation), *see also Newberg on Class Actions*, § 14:03 at 14 (multipliers of up to 4 are common).

Here, Class Counsel request payment of Class Counsel Fees Payment in the amount of \$181,195.59, representing 33 1/3% of the Gross Settlement Amount. *See* Agreement, § 3.2.2. Class Counsel’s lodestar to date is **\$148,545.00** and **186.4** attorney hours, itemized in the following table:

Name	Laffey Matrix Fee	Actual Billing Rate	Hours Billed	Lodestar
William C. Sung (16 th Year Attorney)	\$1,019	\$900	131.50	\$118,350.00
Tiffany L. Luu (6 th Year Attorney)	\$625	\$550	54.90	\$30,195.00
		TOTAL	186.4	\$148,545.00

Sung Decl., ¶¶ 20-22, Exh. 4 - Time and Task Logs of William C. Sung and Tiffany L. Luu. Thus, Class Counsel’s requested fee award of \$181,195.59 represents a **1.22** lodestar multiplier against their lodestar of **\$148,545.00**. Sung Decl., ¶ 22.

1 The work performed by Class Counsel include, but are not limited to, meetings with Plaintiff
2 regarding Plaintiff's work experience and status of the litigation, mediation, settlement, and settlement
3 approval; extensive research and analysis into Defendant's corporate background and litigation history
4 and liability theories; research and analyze Defendant's arbitration agreement; review and analysis of
5 significant amount of documents produced by Defendant via informal pre-mediation production;
6 extensive telephonic and written meet and confer conferences with Defendant's counsel regarding case
7 management, mediation, settlement documents, and settlement approval; analyzing Defendant's
8 rounding and meal period auto-deduct practices based on Plaintiff's records; preparation and submission
9 of Plaintiff's PAGA Notice; drafting complaints; preparation of joint reports and attentions of status
10 conferences; drafting written discovery requests; working with an expert data analyst to analyze the
11 records and preparation of a damages model; research and drafting of Plaintiff's mediation brief and
12 participation in mediation; negotiating multiple drafts of the Agreement, Amendment and attachments
13 thereto; research, preparation, finalization, and filing Motion for Preliminary Approval, supplemental
14 briefing, Motion for Final Approval, and accompanying filings; preparing for and attending hearings on
15 these Motions; and overseeing the notice administration process and distribution of funds;
16 communications with Class Members regarding the Settlement, notice administration, and settlement
17 approval. Sung Decl., ¶ 23.

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

23 Class Counsel's requested fee award of \$181,195.59 represents a 1.22 lodestar multiplier. Sung
24 Decl., ¶ 22. Said multiplier is well below the 2.13 multiplier approved in *Laffitte* and the recognized
25 multiplier range between 2 and 4. *See In re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th at
26 512 (affirming that multiplier of 2.52 was "fair and reasonable"); *Chavez*, 162 Cal.App.4th 43 at 66
27 (affirming award of fees 2.5 times lodestar in consumer class action); *Wershba*, 91 Cal.App.4th at 255
28 (noting that multipliers can range from 2 to 4 or even higher). For these reasons, Class Counsel

respectfully requests this Court approve a fee award of \$181,195.59.

B. The Requested Fee Award is Fair and Reasonable Under Other Factors

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

1. The Results Achieved

Courts have consistently recognized that the results achieved are an important factor to be considered in making a fee award. *Hensley v. Eckerhart* (1983) 461 U.S. 424, 436 (“most critical factor is the degree of success obtained”). Here, because Class Counsel invested significant time and expense successfully prosecuting Plaintiff’s claims, significant monetary relief is to be provided to the Class and the excellent results achieved by Class Counsel through this Settlement alone justify the requested fee award. As discussed above, the Gross Settlement Amount of \$543,586.77 represented approximately 63.91% of the reasonably forecasted recovery for the Class. Sung Decl., ¶ 7.

The 245 Participating Class Member will receive an average Individual Class Payment of \$1,242.31 from an estimated Net Settlement Amount of \$304,366.65. Admin Decl., ¶¶ 15-16. This represents an excellent recovery for the Class considering Defendant’s vigorous defense and the risks of continued litigation. Notably, after being provided with notice of the Settlement and the requested Class Counsel Fees Payment, there were no objections or opt outs by the Class. Admin Decl., ¶¶ 11-13.

As discussed above, Defendant presented a host of defenses, both legal and factual, which potentially could have fragmented the Class into much smaller subclasses, significantly limited the recovery potential for the Class, and dragged the litigation out for years to come. Sung Decl., ¶¶ 12-18. Thus, in reaching this Settlement, Class Counsel carefully considered the strength of the case versus the amount offered in settlement, as well as the risk, expense, and complexity of maintaining class

1 certification through trial. Sung Decl., ¶ 25. While Class Counsel is confident about the strength of
2 Plaintiff's claims, they recognize that Defendant has factual and legal defenses that, if successful, would
3 potentially defeat or substantially impair the value of the lawsuit. *Ibid.*

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

17 Considering these issues, the Gross Settlement Amount of \$543,586.77 for a Class of 245
18 employees is an excellent result. Furthermore, the Class greeted news of the Settlement with 100% of
19 the Class Members participating in the Settlement. The unanimous approval by the Participating Class
20 Members evidences the positive overall result of the litigation.

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

23 Class Counsel worked hard on this case and, expended approximately 196.1 attorney hours in the
24 prosecution of this litigation in the two-plus years since it was filed for a total lodestar of \$157,520.00.
25 Moreover, Class Counsel expects to incur an additional 10 hours of work attending the hearing on final
26 settlement approval, administering the settlement, filing post distribution settlement declaration, and, if
27 needed, drafting an amendment judgment. Class Counsel devoted considerable time and effort to
28 achieve the benefit to the Participating Class and the requested attorney's fee award is appropriate here

1 given the excellent results achieved.

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

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

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

27 Finally, in taking this case on a purely contingency basis, Class Counsel had to turn away other
28 fee generating work because the case required Class Counsel to not only devote considerable time and

resources to effectively prosecute and settle this action, but also wait until the Settlement is fully funded before finally being made whole. Sung Decl., ¶ 29.

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

Class Counsel's 33 1/3% fee request of the Gross Settlement Amount falls within the range of reasonable attorney's fee awards by California courts. In *Laffitte*, the Supreme Court upheld a fee award of one-third of the common fund with a 2.13 multiplier as "within a historical range of 20 to 50 percent of a common fund." *Laffitte*, 1 Cal.5th at 487; *see also Chavez*, 162 Cal.App.4th at 66-67 (approving a 2.5 multiplier, citing *Wershba's* acceptable range, and applying a percentage of recovery cross-check based on a normal marketplace contingency fee range of 20-40% of the recovery to support said multiplier). Here, the requested attorney's fee award of 33 1/3% of the common fund is a reasonable arrangement to obtain competent counsel in the marketplace for representation in wage and hour class actions of this nature and consistent with percentage-of-common-fund fee awards that Class Counsel have received across multiple courts within the State of California. *See* Sung Decl., ¶ 11.

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

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

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

///

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

2 Pursuant to the Settlement, Plaintiff may seek reimbursement of litigation costs up to a
3 maximum of \$20,000.00. Agreement, § 3.2.2. To date, Class Counsel's actual and anticipated litigation
4 costs are of \$10,374.53, including future anticipated costs of \$77.97 in filing this Motion, \$13.66 in
5 filing any supplemental brief and/or amended proposed judgment and order, and \$13.66 in filing the
6 Administrator's declaration regarding settlement distribution. Sung Decl., ¶ 30, Exh. 5 – Itemized Costs.
7 As such, the request for of costs in the amount of \$10,374.53 is fair and reasonable and should be
8 approved.

9 **VII. THE REQUESTED SERVICE PAYMENT SHOULD BE APPROVED**

10 Plaintiff requested, and Defendant does not oppose, a Class Representative Service Payment of
11 \$10,000.00, pursuant to the terms of the Settlement. Agreement, § 3.2.1. Courts have routinely granted
12 approval of settlements containing such enhancements. *See e.g., Herrera v. Federal Express*
13 *Corporation* (C.D. Cal. March 31, 2020) 2020 WL 2951122 at *7 (noting that case law supports
14 enhancements of \$10,000); *Potter v. Big Text Trailer Manufacturing, Inc.* (C.D. Cal. March 20, 2020)
15 2020 WL 1942619 at *10 (awarding \$10,000 enhancement where plaintiff spent 30-40 hours on the
16 matter and entered into a general release); *Smith v. Experian Information Solutions, Inc.* (C.D. Cal. Nov.
17 9, 2020) 2020 WL 6689209 at *7; *Aikhan v. Goodrich Corporation* (C.D. Cal. June 25, 2020) 2020 WL
18 49191382 at *9; *Thomas v. Cognizant Technology Solutions U.S. Corporation* (C.D. Cal. June 24, 2013)
19 2013 WL 12371622 at *9; *Djukich v. AutoNation, Inc.* (C.D. Cal. Nov. 12, 2015) 2015 WL 13756099 at
20 *14.

21 Plaintiff request that this Court approve the Class Representative Service Payment in light of the
22 efforts Plaintiff put into this case, the absence of any objection to the Service Payment, and the excellent
23 result achieved. As shown in Plaintiff's supporting declaration, Plaintiff spent a significant amount of
24 time engaging in discussions with Class Counsel regarding the case, searching for documents relating to
25 their claims, reviewing various files and pleadings in this case, and reviewing the Settlement.
26 Declaration of Katherine Vergara Polanco filed with Plaintiff's Motion for Preliminary Approval, ¶ 4.

27 In addition to the invaluable services they provided, Plaintiff also took a significant risk, both
28 professionally and monetarily, in acting as the Class Representative. Sung Decl., ¶ 31. Filing a lawsuit

1 against one's employer carries an inherent reputational risk. *Ibid.* Given that future employers are much
2 less likely to hire individuals who have filed suit against their prior employer, particularly cases of this
3 nature, Plaintiff could face negative employment prospects in the future. *Ibid.* These risks can deter
4 employees from asserting their rights. *Ibid.* Additionally, because the claims alleged by Plaintiff
5 involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the
6 costs of Defendant had they not prevailed in this action. *Ibid.* Despite this, however, Plaintiff agreed to
7 pursue this case on behalf of the Class. *Ibid.* Moreover, there were no objections by any Class Member
8 to the proposed Class Representative Service Payments. *Ibid.* For such reasons, Plaintiff respectfully
9 requests that this Court approve the award of the Class Representative Service Payment.

10 **VIII. THE SETTLEMENT ADMINISTRATOR'S FEES SHOULD BE APPROVED**

11 Pursuant to the terms of the Settlement, the fees and costs of the Administrator, Apex Class
12 Action LLC, are to be paid out of the Gross Settlement Amount. In total, the settlement administration
13 costs total \$7,650.00. *See* Admin. Decl. ¶ 19, Exh. 2. Thus, settlement administration fees in the amount
14 of \$7,650.00, as agreed to in the Settlement, should be approved.

15 **IX. SERVICE OF MOVING PAPERS ON LWDA**

16 On September 18, 2026, Class Counsel served the LWDA via filing through its online portal at
17 <https://dir.govfa.net/432> (Proposed Settlement of PAGA Case) with the Motion for Final Approval of
18 Class Action and PAGA Settlement; the Declarations of William C. Sung, and Madely Nava of Apex
19 Class Action LLC; the Order Granting Preliminary Approval of Class Action and PAGA Settlement;
20 and the Proposed Judgment and Order Granting Final Approval of Class Action and PAGA Settlement.
21 Sung Decl. ¶ 32, Exh. 6 – LWDA Filing Confirmation.

22 **X. CONCLUSION**

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

- 27 1. Granting final approval to the proposed Settlement;

28 ///

